



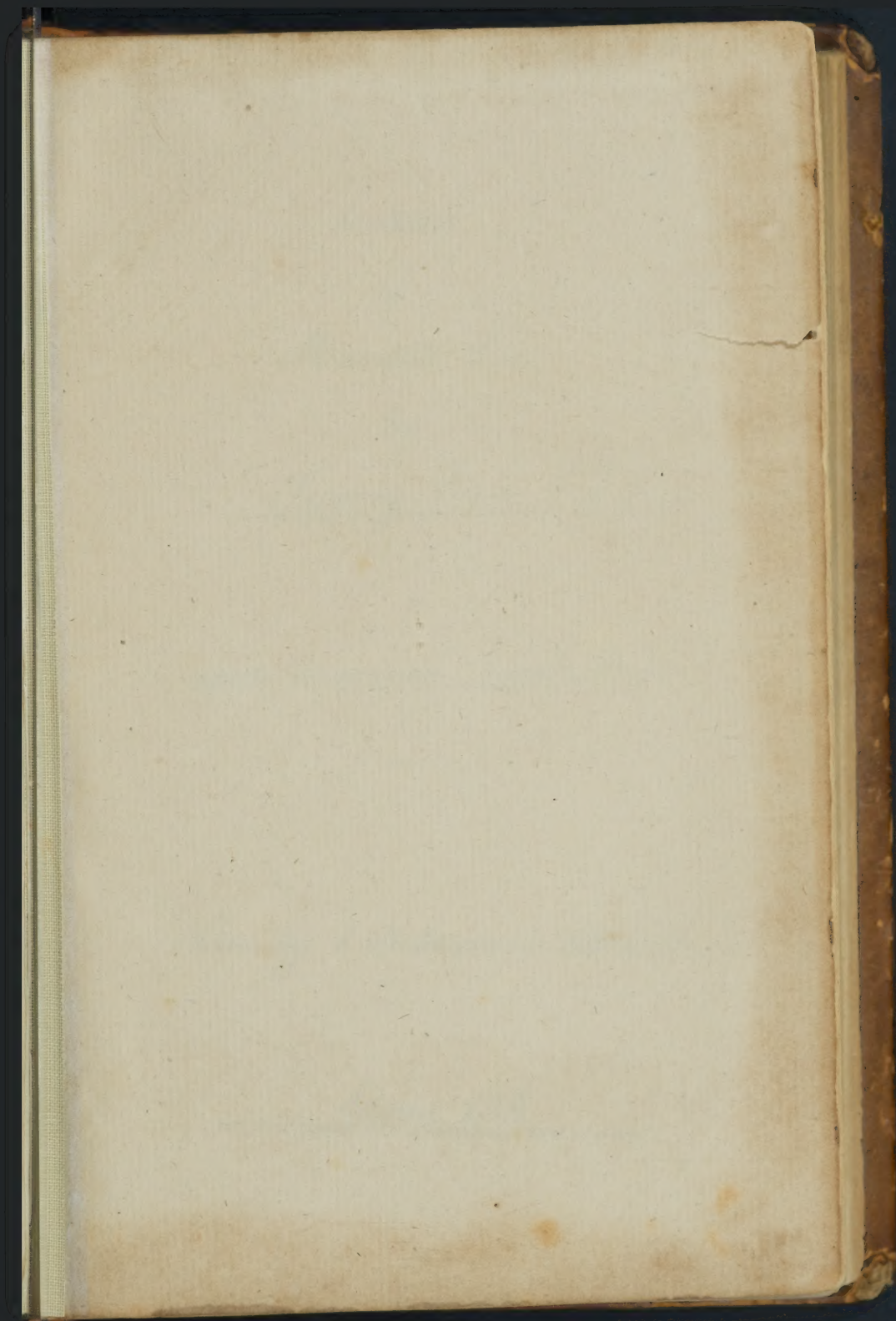
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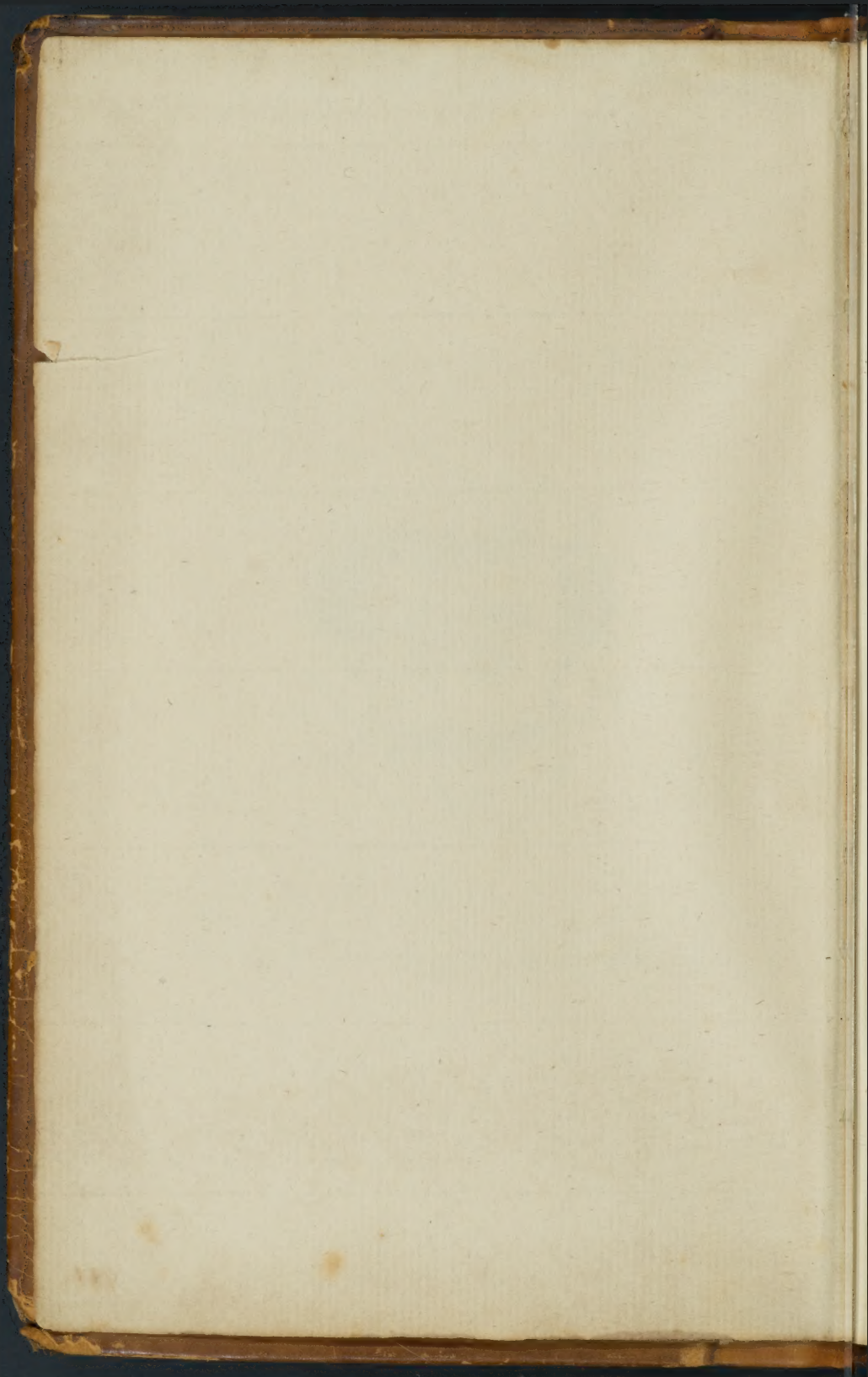


Charles Baldwin.

N^o 101

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L71
1810
v.2





Lectures
on
Municipal Law.

by
Tapping Reeve L. L. D.

viginti annorum lucubrationes

Taken by E. Baldwin in 1810 & 1811.

Volume 2nd

Letter

on

the subject of

the

History of the

County of

taken by A. B. in the year

1811

Devises.

A D. is a disposition of real ~~erty~~ made by a man to take effect after his death. The right of D. ing existed among the Anglo-Saxons, but was abolished at the introduction of the feudal L. The right however was preserved in some parts of Eng. by local customs or by privileges granted by the King or Lord. Tenures for years & chattel interests were not affected by the feudal system in this particular, being Personalties. The use of this right continued for many centuries, but towards the reign of Hen. 2 & Henry 3. But the distinction was ended by the doctrine of uses. This practice was checked by the stat. of uses 27. Hen. 8th which transferred the legal estate to the use man & thus consecrated them. But the Stat. 32 Hen. 8. it was enacted that all persons having a sale in tail, i.e. in fee simple, in co-hencenary or in curtesy of manors land &c should have power to dispose of two thirds of their holden in chivalry, & the whole of those holden in socage, by D. This Stat. was explained by the 34. Hen. 8. The first of these is called the stat. of mills. & two now all English tenures except those of copyhold being converted into socage by Stat. 12. Car. 2. all lands except copyholds are devisable. These regulations as to the manner of making D. were made by the Stat. of Frauds & Perjuries. The stat. of Barons is similar to that of Hen. 8. except that it extends the privilege further. We have also a stat. similar to the clause respecting D. in the English stat. of L. & P. Hence the construction given to these stat. is generally adopted. The power of devising them in Eng. depends upon the Stat. 32 Hen. 8. explained by 34. Hen. 8. The mode of devising is prescribed by the 29. Car. 2. Pow. 47. 2. Bl. 376.

Of the instrument under the Stat. Hen. 8.

A D. under this stat. is an irregular instrument in writing. that is these Stat. having prescribed no form of words. and instruments manifesting an intention, to make a testamentary disposition of lands, & having the formalities required by L. will amount to a D. under these provisions.

videt such intention is not contrary to the established rules of L. & A. when the instrument is in the form of a deed & actually delivered as such. Forc. 277. Barr. 123.

So a d may be written at different times, and different pieces of paper, which need not be joined together - & they all constitute but one d. if so intended. Thus A by one instrument devises blackacre & at a subsequent period he devises to another. Here the donor makes several partial destructions of several parts of his estate, as he may do. In this case however the instrument is not to be declared an or his first will generally - but particularly - as the testator made his will of such a part of his property. 1. Mod. 187. Duck 178 9. Kel. 310. Barr. 18. 105. 682. Camb. 174. 1. Barr. 544. 1. Show. 96. 145.

Barr. 14. Gro. bar. 254. 1. Chan. bar. 244.

So also he may make several d. of different interests in the same estate. As a d. of lands to the testator's younger son & his; afterwards the same lands are devised to the testator's W. for life, paying such a sum to the son. Both stand as if made in 1 instrument - for this is a revocation *pro tanto*. Barr. 18. 9 Gro. bar. 721. 1. Her. 147

So on the same principle a latter instrument may modify & made in a former one - as it may diminish or annul a condition to it. Barr. 19. 20. 2. Mod. 284

A reference in a d. to another instrument, as a deed, makes that deed for the purpose of explaining the intention a part of the d. Thus I devise to it all the rents reserved in a certain deed. Barr. 22. 2. 273. 1. P. W. 490. 1. Her. 224. Ray. 117. 1744

So after a will or d. is made & published, the testator may make a codicil or several explaining altering or enlarging the disposition before made. This annexes the codicil to the d. & considers both as one instrument. But a codicil is never an appendage to a will or d. explaining altering, cancelling or enlarging the disposition. Barr. 26. 2. Her. 262. 1. Do. 187. But a mere mental in a d. of something contained in another instrument is not a d. 1. Her. 86.

In the construction of the stat. of Hen. 8. there holds that that every d. of lands must be in writing. But the judges took the word writing in its most extensive & vague sense

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indeed such intent as including these acts *memoranda* & letters explaining the donor's intention. Revised 945. Para. 24. Dyer 72. Moore 117. Bro. E. 100. 2. Bl. 376.

Indeed it was held that the writing need not mention by the name or authorized ^{by the} ~~the~~ *donor*. A D. written by an Atty in pursuance of instructions of the donor & written in his absence & not even read to him was good. Para 26. Dyer 72.

So it was ^{decided} ~~decided~~ if an in extremis had declared his intent to devise by hand, to a particular person, & another with out any direction or atty had induced it to writing in the donor's life time, it would be a good D. But these 2 last opinions were now overruled, & it was held that the D must be completely reduced to writing during the donor's lifetime by his direction or his word. Para. 26. Sec. 79. 9. Do. 119. Bro. E. 100. Dyer 72. 2. Kel. 445. 1. Sec. 119.

But when the D. or directed several distinct Ds, & after an was completed but before ^{the} ~~the~~ *other* was, died. the first was adjudged good. Para 29. 9. Co. 31.

So it was held an D might be good in part & void in part as when a scrivener annexed a condition to the D without atty. the condition ^{was} is but the D is good. Dyer 72. Par. 29. But it is otherwise where there is a direction to devise on condition & the D is written without the condition. here the D is not written in the testator's life time. 1. Kel. 440

Moore 396.

A signing by the Don is considered as unnecessary under the Stat. & his name ^{may} not appear upon the face of the instrument. Para. 30. 31. 1. Sec. 362. 2. Sec. 35. 9. Do. 79.

Indeed it was held that any writing tho not signed & attested by the Don was sufficient, & that the evidence of it truly was enough to establish it. As to this effect probably occasioned the clause in the stat of Francis & Benjamin. It was formerly held that cont interests resting merely in possibility could not be devised under the stat of wills. Para. 34. 3. Sec. 527. Tamm 291.

It is now clearly settled that they may be i.e. possibilities

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coupled with an interest before the interest vests are devisable - not so if nature prohibits. Corv. 35. 294. 1. Bl. Ret. 222. 3. Br. 20
1. Hen. Bl. 30. 1. Fant. 203.

But an estate that is turned to a mere right is not within the provision of the stat Hen 8th - as a reversion discontinued for example tenants in tail & a reversioner join in a lease for life - the reversioner can't devise the reversion for tis discontinued. Corv. 38. 6. Cro. Jac. 281. 293. Civ. 87. 408.
2. Bl. 138.

An estate *her auter vie* is not devisable under the stat Hen 8. For they are confined to persons having land in fee simple so as an estate for several lives. Corv. 218. 387. 1. Roll. 334, Cro. 858.
Co. Litt. 31. 2. Roll. 150. Heib. 480. 1. Ver. 268.

So of a base fee, a freehold describable *her auter vie* if taken out in tail grants to A & his heirs. I can't devise this interest. Corv. 36. Carter 208. 311. Rep. 91. 2. Dyce 253.

But now by Stat Car. 2nd estates *her auter vie* are devisable unless there is a special occupant. Corv. 97. 2. Bl. 257.

Our Stat also binds devises of estates *her auter vie*, & all other estates he might have transferred during his life. Stat Car. 25
 dignities offices & franchises tho they may be describable in Eng are not devisable. Corv. 40. 41. 3. Co. 92. 10. Co. 81

Freehold estates in Eng are not devisable. They must be to the use of the mill. Not within the stat of Hen 8th. Corv. 10. 98. Wood Inst. 138.

The right of mortgaging an land depending on the non performance of some condition is not devisable - for he has not the land till breach of the condition. & this strictly speaking is no estate in lands. Corv. 46. 183. 1. Ver. 223. 422.

Other itself, that is the instrument.

The laws relating to this subject in the stat of Francis & the former enact, that all d. of lands shall be 1st in writing, 2^d signed by the deviser, or by his consent in his presence or by his express direction & signed by witnesses in his presence 3^d by 3 witnesses & 4th by credible witnesses. The object of these provisions is to guard men in testaments against fraud
Corv. 47.

And no form being prescribed by the stat Hen 8th any

instrument which would have been given as a devise in the
stat. will now be given if the instrument is made in the
stat. of devises and otherwise. Hence under the stat. the a
L. executed according to the stat. may by reference to another
instrument make it a part of the L. the instrument
reference to is not then executed, as if it by a properly exe-
cuted under this stat. changes his land with legacies of L.
by another instrument not then executed gives legacies, the
legacies will bind the land. Bar. 19. 45. 2 Atk. 367. 2 M. & K. 433 3. Burr 1775.

If any land or ^{personalty} instrument of the subject matter of the devise
By the stat. it is made as a last will, then a will, and
intend to a bequest of a chattel interest. Bar. 59. 4. 10. 16.

A trust of an inheritance made under a power of making
will must be executed according to the stat. the L. of an
estate is conveyed to A to make use as B shall appear by
will. Bar. 46. 1. R. W. 760. 2. do 254. 2. W. 177.

A trust of an inheritance is within the stat. and is made
but by an instrument made according to L. 9. Atk. 152. 2. M. & K.
By will is meant such a will as is proper for the disposing
of lands. It is general rule that a writing purporting
to be a will, if owned, to as such constitute as an appor-
ment - for otherwise the mischief intended to be prevent-
ed by the stat. would arise. Bar. 58. 4. 10. 16.

And if a legacy is given originally out of land, the will
creating the charge must be made according to the
stat. such a charge is in effect, a disposition in part
of the land by L. 9. is different from the instrument
purporting to be a will. Bar. 59. 2. Atk. 267. 250.

Bequests arising out of lands are within the power
of the stat. Bar. 59.

So a will giving an execution power to a will may
be made according to the stat. For this is indirectly
disposing of lands, or what is the same thing creating
others to do it. 2. W. 179.

The words in stat. of devises extend to all lands bequeathed
in will either by the stat. of wills by itself, by the
the stat. of devises or by any custom.

they act on a reservation importing a saluam in test. as the
 testator to dispose of his property by the instrument is suf-
 ficient. The instrument as a deed is held
 to be a publication & this was so here as a case where
 the witnesses were present upon a deed. 1. Burr. 125. Rev. 81

As to claiming to the witness this is my last will is suffi-
 cient. Case 42.

If a publication may be inferred when the form of the
 attestation was in the testator's handwriting. & in this case
 signed seals & delivered in presence of H. & H. id. to three
 take notice. Case 62-3.

But the publication must be in the presence of 2 wit-
 nesses, it seems; at least this is what we infer as to a
 republication. Case 663. Com. R. 374.

Of the Witnesses Subscriptions.

It is better that if the will is written on 3 sheets of paper
 & 1 witness subscribes each piece of paper he is enough. So
 if the sheets are wrapped up into blank paper, the witness
 subscribes upon they are to be sufficient. Case 89. 30
3. Burr. 1778. 1. Do. 5. 45. Trin. 1780. Pen. 165. Carth. 37. 3. Mod. 160
Case 682

In the presence of the testator - then words are held suffi-
 cient to "write the will" 2. Bl. 377.

If the witness subscribes within view of the testator - it is
 enough. By the word "view" is meant possible view - for
 the testator might have seen the witness subscribe
 the subscription is in his presence. As when he looked
 into a gallery thro a glass door. So if the curtains of his
 bed are closed the subscription is good. Salk. 275. 688. Carth. 11
1. Eg. ca. 401. Salk. 378. 1. Burr. 165. Carth. 77. 1. Law. 87. 284.
 But the subscription tho in a contiguous apartment is
 not good unless the testator might have seen it. Case 12.

Carth. 72. Bomb 186. Holt 122. 1 P. W. 232. Shaw 82.

tho the witnesses refuse to subscribe at the testator's request, the same rules apply, for this clause it seems was intended to prevent, but also mistake as to the validity of the instrument. Carth. 72. Shaw 285. 2. Bl. 377. Doug 232.

If the testator is incapable at the time of attestation, tho corporally present the attestation is not good. This principle implies in construction a mental presence. Carth. 72. Shaw 285. Doug 232.

If the testator is infirm he might see the witnesses, but they manage clandestinely to sign it, while he doubts whether to punish the execution or not his will is void. 1 P. W. 232. Shaw 79.

tho the witnesses must subscribe in the testator's presence yet the fact that the subscription was in his presence need not appear upon the face of the instrument. It is a fact for the consideration of the jury. Indeed it states in the instrument it must be proved. If the witnesses are dead, the jury may presume the fact. 1. Shaw 128. Carth. 6. 38. Law. 84. Bulst. 265. 2. Strange 1103.

By 3 or more witnesses: under these words it has been determined that if a D. is signed by A. & B. & attested by C. & D. the D. is not signed by 3 witnesses within the Stat. If the D. is not witnessed a codicil with 3. Witnesses will not make it good. Carth. 72. Shaw 102. 110. Carth. 35. Holt 762. Marsh. 175. 3. Med 262. 1. See also 1. D. 597. Carth. 680.

But quere as to the principle. I think it does not of any except in one case that the D. was present when the codicil was made. Carth. 117.

The distinction between a D. & a codicil appears to be the ground of these decisions. Carth. 108. 9. 1. Shaw 565.

A D. made at several times & in several distinct parts, the attestation of 1 part is sufficient. But the question may be asked what is the difference, as to will & a codicil but 1 instrument. A codicil is supposed to be intended to affect an instrument already completed, not to consummate per se its nativity. The attestation of the codicil therefore is not essential as to the original D. but an attestation of 1 part is

attested & subscribed by 9 or more credible witnesses. —
The general object of this clause is to prevent the frauds com-
mitted on the recent enactment of D. 1. 119. 80.

The witnesses are to attest 3 things — 1. The sanity of the testator
2. The fact of signing & 3. The fact of publication.

1st They are to attest the sanity of the testator at the time of the
For the signing they attest included in 6. not only the pres-
ent act of writing the testator's name, but also the mani-
fest power or capacity of making a legal & effectual sig-
nature. 3. 1. 119. 8. 167. ^{These may be now held in 119. 8. 167.}

And when the 6 is read, the witnesses attest the testator's sanity
before — The most probable view is the last two —
viz. the witnesses to have been present is not sufficient.
2. 119. 8. 167. Bro. 119. 305.

These acts of being present & attesting a will, are not to be
taken as evidence of the testator's sanity. 3. 1. 119. 8. 167. ^{the point here}
might be required proof, as the law now is of them. 3. 1. 119. 8. 167.
But the testimony of the witnesses is not sufficient, as it is
as to the testator's sanity. 2. 119. 8. 167.

It seems now that the witnesses must attest to the testator's
sanity the 6. 119. 8. 167. ^{the law now is of them.}
to attest in 6. to be insane.

2nd They attest to the 6. — viz. signature. It is not
saying that the witnesses should have seen the testator
sign — if the 6. or witness to their signature is given
& the will is given. 3. 1. 119. 8. 167. 2. 119. 8. 167. 3. 1. 119. 8. 167.
2. 119. 8. 167. Rev. 11. 119. 8. 167.

But the testator saying this is my will is no evidence of
the fact of signing. 2. 119. 8. 167.

It seems however that a written declaration in the hands
of the testator, that his name was written by
himself is sufficient evidence to a jury of the fact of signing
it is an implied acknowledgment. 3. 1. 119. 8. 167. ^{the law now is of them.}
acknowledgment necessary. 2. 119. 8. 167.

3rdly they are to attest the publication. A publication
was made before the state of frauds, & is not taken away
by it — it is analogous to the custom of ratifying a deed.
2. 119. 8. 167. Rev. 11. 119. 8. 167.

By the publication of a will is meant some act of the
testator amounting to a declaration, that the instrument
is his will. 2. 119. 8. 167.

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of the original D. is intend to give auty to the whole.

Row. 680. 2. Hen. 597.

But when there is a will, & codicil on the same piece of paper, the question whether the signature be lawful to cover both is determined by jury. Row. 106.

As to the question whether a subsequent signing is a codicil, or a distinct part of the original D., it seems that, if the subsequent part relates to personally only & is executed afterwards, in the state of this circumstance furnishes presumptive evidence that it was not intended as a codicil. Row. 109. 1. Bac. 554.

It is not necessary that the witnesses should subscribe in the same presence as at the same time. 2. Atk. 177. Row. 1778. 2. Hen. 529. Or. 64. 147. 2. 1. 109. Row. 1. 110.

But it is most safe to require the attestation is sufficient to show that all signed it in the testator's presence and unless all are present proof can be thus made of the ^{only} signing the hand writing of the attesting is proved. In such case proof can be had that the attests signed in the testator's presence and all were present together. But 264. Row. 708. 2. 1. 1. 704. 1. 1. 144. 1. 1. 36. Row. 635. 4. Row. 3224.

c. 1

Row. 720. 708. 1. P. W. 141. 1. Hen. 177. Row. 70

Row thinks that if the D. is identified in the codicil that has witnesses, and is present when the codicil is executed, it will be good. Or. 64. 270. 2. Hen. 287. Row. 1. 110.

The ground of the decision on this subject is that the witnesses of the codicil must identify the will & the codicil is whether on the same piece of paper or good. 1. Row. 548.

brother witnesses. His explanation is not in the same. And the word credible seems to be unmeaning, for the identity of the writing is engaged into, & means inconsistent it is unnecessary for completion is implied in the word writing. Row. 149. 1. Bac. 717.

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It has been decided that as there is not such a meeting
the stat maxim. I clearly so as to become - can make
is no meeting, is not a suitable meeting, month 514. 11. 11.
Ed. May. 505. January 510. 11. 11. 277.

This note intends to interest such persons generally, who
is a good witness, to the other cases in the next witness
month. To caution to persons, as witnesses, in court, about
witnesses, give in their testimony, that they were
not, as when before the court, the note, I was correct
of testimony. June 12 83. Rev. 116.

If the witness, who interviewed at the time of illustration
is competent to testify at the time of examination,
can the D. be established if it is well proved? He
was told that it could not be that fact - that the
witness must be competent at the time of illu-
stration. The witnesses were heard on cross-examination
on facts not relevant - an interview was submitted
in the case above referred to; this case was referred
to the two previous numbers - there was a difference
of opinion - & the case was compromised. Can. 113
Chas. 1253. Can. 116, 7. 120. 1. Ver. 503.

The question has been decided largely in favour of A.
B. under such circumstances - the ruling was much re-
condemned by the public because of the same - but as they
must stand before the line of examination - the same
has been fully settled - the same opinion was reiterated
by Dr. H. H. H. in June in Reg. p. 1. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.
Vol. 503. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.

The case of Dr. Silsby's mill is in point to the same purpose. the witnesses all had agagies changed, & the land by 2 miles. It was not till 1811 that the testimony was given, & not before which was established. numerous has. Vol. 1. P. 427. P. 130.

It is questioned whether the δ to the contrary is not
void ab initio, so that the weight lies as to the δ .

The many Devises.

The rule in Eng. is that all persons who may convey, & who are not disqualified at L. E. as by the express words of the Stat. of wills may devise. (Law. 143.)

By the words "all persons" in the stat. 32. Hen. 6. in many natural persons as right quicks, free will, or body in personate. Can under this stat. conveyance & devise.

J. Beere: "Between the time of this and 1st. & 4th. Hen. 6. man could devise. The stat. says all persons may devise. By this was meant that all persons who could devise had duty might devise real." (Law. 131. 1. Hen. 6. 38.)

As to natural persons there are 4 positive signs of insanity in the stat. 32. Hen. 6. to wit: 1. Incontinence of mind, 2. Non sane memory, & there are all L. E. disqualified. (Law. 142. Dyer. 954. b. Hen. 300.)

According to the construction of this stat. 32. of those persons who could not convey, & who before the stat. 32. Hen. 6. cannot under the stat. devise them. (Law. 141.) According to the construction given to our stat. all persons who before the stat. could devise freely which persons were not at L. E. can devise under the stat. & it is not regarded as a forfeiture. See Beere.

The certain parts of Eng. law, as to insanity, are not so complicated as the common law, & proceeding the day of our birth. (Law. 140. 4. Salt 44. 586. 1. L. E. 142. Hen. 6. 38.)

2. An idiot is one who has no understanding from the time of his birth. But a person is not an idiot if he has any understanding of reason - as if he can tell his age. (Law. 307. Hen. 141. Dyer. 141.)

A person deaf, dumb, blind, can't devise, for he is deemed an idiot as wanting those senses which are necessary to the mind ideas. (Law. 140. 60. Lamb. 42. 1. 3855.)

3. A person of non sane memory, tho' not an idiot and devise - by those words are meant insanity, in a general sense. (Law. 141. 60. Jan. 597. Dyer. 141.)

initio; he had nothing then to devise. 9. Rev. 1488. Ch. 87
3. Co. 31. Pow. 176. 1. Co. bar. at 172.

In Case 1 and Case 2 can devise if the moves of the dev
 are general - there is no remainder.

is a general rule that a man can't devise lands that
 he is not seised of at the reception of the will. This in-
 deed is the 1. d. rule as applicable to D. & C. customers.
 Thus if the testator seizes all his lands & afterwards
 purchases more, the latter does not pass. It is in the
 nature of a conveyance in present to be taken in the
 futuro. The owner must have a present interest.
Pow. 183. 198. 2. Bac. 51. Co. Litt. 111. Bro. 4. 104. Rev. 171.
Salk 237. Holt 246.

There are some opinions opposed to this - because it is
 inconsistent with some writings. It is otherwise as to an
 after purchasing lease for years. This is only a chattel
 for a piece of personal estate, not conveyed at b. & c. as a
 gift of a specific thing, but is the appointment of
 him to the free estate. Pow. 191. 183-7. 1. d. W. 575. 3. Co. 102.
Salk 237. Pow. 187.

So in D. & C. customers in marriage that D. as seised
 is - for the conveyance is not consummated till the
 testator dies. Thus if the owner of land after seising
 it is dispersed & continues so till his death, the
 is void. But in otherwise if the D. is dispersed by
 or has no such case the D. will be good in Chancery.
1 Roll 66. 378. Pow. 183. 565. 611. Holt 148. 1. Co. bar. at 173.

The same rule obtains in the Stat. Rev. 2. 2. Ba. 52
1. Mod. 217. Holt 251. 249. Pow. 129. Rev. 341.

But if the owner, being dispersed at the time of ma-
 king the D., afterwards enters & continues seised until
 his death, the D. is good. For he is supposed to have been seised
 at initio. He is seised by relation & an action lies for the
 money profits. Pow. 183. 2. Ba. 52. Salk 238.

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19.

b. The heir fulfills not his agreement - being will. compelled him to do it tho they would avoid the will - for the will was not obtained by force, but the trustee consented in the heir refusing to perform his agreement. 1. PM 484. Br. 44. 5.

Of things devisable.

In Eng under the stat then & not others there a fee simple estate is devisable. The words "estates of inheritance" being declared by the 24 then & to include estates in fee simple only.

The words of one stat being general, "lands & other estates" include also estates "per annum vic" & halter interests devisable by l. & - as terms for years. Pow. 2. 437. 3. 407.

But 1st As to the subject matter - all lands not devisable by stat custom are so under these stats. "All lands then" not the subject matter, not the tenant estate. "The estates" are not devisable - "all lands" are - i.e. if the tenant has a devisable interest in them. Pow. 229.

Terminations & Hereditaments not valuable are not devisable under these stats - as personal franchises, ways &c. The words of the stat then are "of annual value" - ways then are not devisable - they are no estate, but annual only. Bro. 6. 359. Pow. 227. 220. 41. 3. 40. 32. 10. Co. 81.

Advowsons are devisable under the stat then - but only if the owner has a devisable interest in them. Pow. 220. 226. Bro. 2. 369. 1. 44. 619. Litt. sec. 485. Bro. 8. 805. 9. Co. 99.

An annuity in fee is devisable - tho different from a rent in this, that tho a yearly sum charged on the revenue of the grantor. Pow. 229. Litt. 144.

2nd What estate is devisable under these stats & what interest must the donor have in things devised?

There are several estates in lands & other things, as fee

... of devises may now be made in the following manner -

... thus to be done if the devise is to be made in the following manner -

... in the case of the devise of the land in the following manner -

... to the tenant in fee simple, after the death of the tenant in fee simple, the land shall be divided into three parts, one part to be held by the tenant in fee simple, the second part to be held by the tenant in fee simple, and the third part to be held by the tenant in fee simple.

And a limitation of the devise may be made in the following manner -

So a term for years of land may be created by devise in the following manner -

either, called by name, may be either absolute
 or conditional. Thus, in life, generally, as
 in a gift, payment is certain, but in the
 case of a condition may be either precedent or
 subsequent. — as 245. See 246. 246.

There are no critical cases to distinguish - there
are degrees of conditions - every condition is to be
considered in present or subsequent cases -
the a parent interest of the decision - Feb 16 - 1896.

It is a question regarding the qualification of the
juror is taken in its nature precedent for
for example, of English law on this point the
most of the English precedents — as 2 of 2 last 111
770-

as a clerk & it is now a very small town
not within three months of the legislative death
the executive & judicial, all demands to be
satisfied in future interest period. For 1846
1844-20 1845-105-

relative estate by descent may be either legal
or equitable. - a devise of land since the death
- or since the legal estate was in one more the
act of use of land is a devise of a legal estate
for the estate encumbered the use of land here
the legal estate is _____ the use of land is 1750 1750
2 1/2.

1. But in cases of a use before the date of the
will, an affidavit attesting to the use is the
evidence of a trust in equity - provided it is said to
be a trust in fact when the legal estate is vested

Devises

24

But if I am sure that his estate shall be taken, then that the
land shall be sold by them, and appoints appraisers & appraisers
themselves to sell, they have power to sell. How. 292.
Moore 774. Co. Litt. 115. 1 Roll. 380.

It seems, that his final duty is immovables, his duty to B.
to sell for the payment of his debt, all the residue of his
real estate to B. & the final is sufficient. B takes the im-
movable estate. How. 43. Co. Litt. 115.

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Trusts

29.

sale of a sale property, the owner of it, the trustee in this respect - If I appoint B as trustee for A, and A sells by his executor - a sale by the other trustees is not good. Rev. 297
Case 26. 224. Dyer 176. 1 Inst. 113. 1 Harw. 341.

If a person devises his lands, without naming - I will do it - the executor of the person, or the person to whom the estate is in payment of debt, I will do it. 1. Hk. 420. 1. Bac. 200. 1. 2. 30. 1. Case. 301. 278.

But if the executor has no concern with the estate of the sale, that is if the money is not of debt in his hands, the executor must sell. 1. Hk. 420. Case. 299. 1. Rev. 304. Case. 307.

But in the last case but 1. the executor, who may sell alone - for they take as executor - upon the same principle it seems that the executor of the estate, might sell. Case. 298. 307. 2. Rev. 220. Dyer 370.

If the person then empowered to sell refuses to do it, then for his benefit the sale may be made, may in the case compel him. Case. 300.

If the person appointed should die, it seems that he should supply a trustee. Case. 303.

~~And~~ of lands to an executor or to a trustee to sell is a bargain coupled with an interest. Case. 304. 2. 4. 1. Inst. 23. 181. 113.

So if I devise the profits of my lands, to A. till his son is 21 to educate him - the gift of A is coupled with an interest. Case. 301. 2. Leon. 221. 3. 28. 78. Dyer 210.

In those cases the A. or not the heir shall have the estate, until the expiration of the time limited - If the A. should die his representatives may hold it during the time limited, for so his estate during the time. Case. 302. Case. 282. Hob. 288. 2. Rev. 221. 3. Leon. 78. 1. Bac. 200. Hatch 90.

If the estate of the A. will continue till the expiration of the time, the object of the A. shall be to sell.

the son the D. can't take effect till his death. 1. 40. 410. 1. 415. 1. 416. 1. 417. 1. 418. 1. 419. 1. 420. 1. 421. 1. 422. 1. 423. 1. 424. 1. 425. 1. 426. 1. 427. 1. 428. 1. 429. 1. 430. 1. 431. 1. 432. 1. 433. 1. 434. 1. 435. 1. 436. 1. 437. 1. 438. 1. 439. 1. 440. 1. 441. 1. 442. 1. 443. 1. 444. 1. 445. 1. 446. 1. 447. 1. 448. 1. 449. 1. 450. 1. 451. 1. 452. 1. 453. 1. 454. 1. 455. 1. 456. 1. 457. 1. 458. 1. 459. 1. 460. 1. 461. 1. 462. 1. 463. 1. 464. 1. 465. 1. 466. 1. 467. 1. 468. 1. 469. 1. 470. 1. 471. 1. 472. 1. 473. 1. 474. 1. 475. 1. 476. 1. 477. 1. 478. 1. 479. 1. 480. 1. 481. 1. 482. 1. 483. 1. 484. 1. 485. 1. 486. 1. 487. 1. 488. 1. 489. 1. 490. 1. 491. 1. 492. 1. 493. 1. 494. 1. 495. 1. 496. 1. 497. 1. 498. 1. 499. 1. 500. 1. 501. 1. 502. 1. 503. 1. 504. 1. 505. 1. 506. 1. 507. 1. 508. 1. 509. 1. 510. 1. 511. 1. 512. 1. 513. 1. 514. 1. 515. 1. 516. 1. 517. 1. 518. 1. 519. 1. 520. 1. 521. 1. 522. 1. 523. 1. 524. 1. 525. 1. 526. 1. 527. 1. 528. 1. 529. 1. 530. 1. 531. 1. 532. 1. 533. 1. 534. 1. 535. 1. 536. 1. 537. 1. 538. 1. 539. 1. 540. 1. 541. 1. 542. 1. 543. 1. 544. 1. 545. 1. 546. 1. 547. 1. 548. 1. 549. 1. 550. 1. 551. 1. 552. 1. 553. 1. 554. 1. 555. 1. 556. 1. 557. 1. 558. 1. 559. 1. 560. 1. 561. 1. 562. 1. 563. 1. 564. 1. 565. 1. 566. 1. 567. 1. 568. 1. 569. 1. 570. 1. 571. 1. 572. 1. 573. 1. 574. 1. 575. 1. 576. 1. 577. 1. 578. 1. 579. 1. 580. 1. 581. 1. 582. 1. 583. 1. 584. 1. 585. 1. 586. 1. 587. 1. 588. 1. 589. 1. 590. 1. 591. 1. 592. 1. 593. 1. 594. 1. 595. 1. 596. 1. 597. 1. 598. 1. 599. 1. 600. 1. 601. 1. 602. 1. 603. 1. 604. 1. 605. 1. 606. 1. 607. 1. 608. 1. 609. 1. 610. 1. 611. 1. 612. 1. 613. 1. 614. 1. 615. 1. 616. 1. 617. 1. 618. 1. 619. 1. 620. 1. 621. 1. 622. 1. 623. 1. 624. 1. 625. 1. 626. 1. 627. 1. 628. 1. 629. 1. 630. 1. 631. 1. 632. 1. 633. 1. 634. 1. 635. 1. 636. 1. 637. 1. 638. 1. 639. 1. 640. 1. 641. 1. 642. 1. 643. 1. 644. 1. 645. 1. 646. 1. 647. 1. 648. 1. 649. 1. 650. 1. 651. 1. 652. 1. 653. 1. 654. 1. 655. 1. 656. 1. 657. 1. 658. 1. 659. 1. 660. 1. 661. 1. 662. 1. 663. 1. 664. 1. 665. 1. 666. 1. 667. 1. 668. 1. 669. 1. 670. 1. 671. 1. 672. 1. 673. 1. 674. 1. 675. 1. 676. 1. 677. 1. 678. 1. 679. 1. 680. 1. 681. 1. 682. 1. 683. 1. 684. 1. 685. 1. 686. 1. 687. 1. 688. 1. 689. 1. 690. 1. 691. 1. 692. 1. 693. 1. 694. 1. 695. 1. 696. 1. 697. 1. 698. 1. 699. 1. 700. 1. 701. 1. 702. 1. 703. 1. 704. 1. 705. 1. 706. 1. 707. 1. 708. 1. 709. 1. 710. 1. 711. 1. 712. 1. 713. 1. 714. 1. 715. 1. 716. 1. 717. 1. 718. 1. 719. 1. 720. 1. 721. 1. 722. 1. 723. 1. 724. 1. 725. 1. 726. 1. 727. 1. 728. 1. 729. 1. 730. 1. 731. 1. 732. 1. 733. 1. 734. 1. 735. 1. 736. 1. 737. 1. 738. 1. 739. 1. 740. 1. 741. 1. 742. 1. 743. 1. 744. 1. 745. 1. 746. 1. 747. 1. 748. 1. 749. 1. 750. 1. 751. 1. 752. 1. 753. 1. 754. 1. 755. 1. 756. 1. 757. 1. 758. 1. 759. 1. 760. 1. 761. 1. 762. 1. 763. 1. 764. 1. 765. 1. 766. 1. 767. 1. 768. 1. 769. 1. 770. 1. 771. 1. 772. 1. 773. 1. 774. 1. 775. 1. 776. 1. 777. 1. 778. 1. 779. 1. 780. 1. 781. 1. 782. 1. 783. 1. 784. 1. 785. 1. 786. 1. 787. 1. 788. 1. 789. 1. 790. 1. 791. 1. 792. 1. 793. 1. 794. 1. 795. 1. 796. 1. 797. 1. 798. 1. 799. 1. 800. 1. 801. 1. 802. 1. 803. 1. 804. 1. 805. 1. 806. 1. 807. 1. 808. 1. 809. 1. 810. 1. 811. 1. 812. 1. 813. 1. 814. 1. 815. 1. 816. 1. 817. 1. 818. 1. 819. 1. 820. 1. 821. 1. 822. 1. 823. 1. 824. 1. 825. 1. 826. 1. 827. 1. 828. 1. 829. 1. 830. 1. 831. 1. 832. 1. 833. 1. 834. 1. 835. 1. 836. 1. 837. 1. 838. 1. 839. 1. 840. 1. 841. 1. 842. 1. 843. 1. 844. 1. 845. 1. 846. 1. 847. 1. 848. 1. 849. 1. 850. 1. 851. 1. 852. 1. 853. 1. 854. 1. 855. 1. 856. 1. 857. 1. 858. 1. 859. 1. 860. 1. 861. 1. 862. 1. 863. 1. 864. 1. 865. 1. 866. 1. 867. 1. 868. 1. 869. 1. 870. 1. 871. 1. 872. 1. 873. 1. 874. 1. 875. 1. 876. 1. 877. 1. 878. 1. 879. 1. 880. 1. 881. 1. 882. 1. 883. 1. 884. 1. 885. 1. 886. 1. 887. 1. 888. 1. 889. 1. 890. 1. 891. 1. 892. 1. 893. 1. 894. 1. 895. 1. 896. 1. 897. 1. 898. 1. 899. 1. 900. 1. 901. 1. 902. 1. 903. 1. 904. 1. 905. 1. 906. 1. 907. 1. 908. 1. 909. 1. 910. 1. 911. 1. 912. 1. 913. 1. 914. 1. 915. 1. 916. 1. 917. 1. 918. 1. 919. 1. 920. 1. 921. 1. 922. 1. 923. 1. 924. 1. 925. 1. 926. 1. 927. 1. 928. 1. 929. 1. 930. 1. 931. 1. 932. 1. 933. 1. 934. 1. 935. 1. 936. 1. 937. 1. 938. 1. 939. 1. 940. 1. 941. 1. 942. 1. 943. 1. 944. 1. 945. 1. 946. 1. 947. 1. 948. 1. 949. 1. 950. 1. 951. 1. 952. 1. 953. 1. 954. 1. 955. 1. 956. 1. 957. 1. 958. 1. 959. 1. 960. 1. 961. 1. 962. 1. 963. 1. 964. 1. 965. 1. 966. 1. 967. 1. 968. 1. 969. 1. 970. 1. 971. 1. 972. 1. 973. 1. 974. 1. 975. 1. 976. 1. 977. 1. 978. 1. 979. 1. 980. 1. 981. 1. 982. 1. 983. 1. 984. 1. 985. 1. 986. 1. 987. 1. 988. 1. 989. 1. 990. 1. 991. 1. 992. 1. 993. 1. 994. 1. 995. 1. 996. 1. 997. 1. 998. 1. 999. 1. 1000. 1.

children may take by D. but he can hold a ny until
office has determined the estate shall vest in the hands
of the king - or any other person see the state. Law. 316. 4.
2. Rev. 960. 4. Rev. 961. 4. Rev. 141. 3. Rev. 254.

An illegitimate child can't be a D. until he has acquired
a name by reputation. Thus as to the name of I. is not given
till the D. has acquired the reputation of being a son
he has a bastard. But as to I. B. he has a name given
name, then a bastard is given I. B. 3. Rev. 313. 4. Rev. 314. 4.
2. Rev. 147. 1. Rev. 410. 1. Rev. 10. 6. Rev. 15. 2. Rev. 43.

If a D. is made to the children of a D. the legitimate shall
include the illegitimate. Yet such a D. is made by the
mother of the bastard if she is the same wife holds
Law. 345. 5. Moore 13. 1. Rev. 123. 4. Rev. 345.

As to natural husband not in effe - as husband in ventura
or name, at the D. is death
Destinations must previously taken between a D. and a
D. to an infant in ventura or name of a D. by way of re-
marriage. The latter was husband good. The former was
bastard when the particular estate determined - fatherhood
not. Law. 920. Moore 967. Rev. 224.

But now by stat 10 & 11. H. 3. if an estate is limited to 1. with
a contingent remainder to his unborn son, a posthumous child
shall take if born in his father's lifetime. Duns. Whether
this stat extends to D. 2. Rev. 169. 3. Rev. 125. 4. Rev. 312.
Rev. 321.

So a Destination has been taken between a D. to a son
not in effe - as ventura or name, & a son in ventura or name
not, in the latter case it will settle that the son in
may take. Thus to a son in ventura or name it shall be
bastard. Law. 922. 1. Rev. 153. 1. Rev. 144. 4. Rev. 229. 4. Rev. 1093.
2. Rev. 125. 4. Rev. 129. 5. Rev. 50.

i. e. an ~~every~~ in future disposition 7. 3um 2174 Barw. 32 L. 36.
Atk 230. 2um. 524. 1. Atk. 105. 2. Mod. 8. 1. 1. Atk. 546.

As to a D to an infant in ventre sa mere with a man
 an over see Barw. 56. c. Moore 5807. 6um. 537.

limited persons may in D. as Barw. 32 L. 36. as Atk. 546. & c.
 the extra of it is extra. So also civil persons who not in age
 if the interest is clear - as to the extra of it, Barw. 336.

But Parishioners are not such civil persons as can take
 in that character. Barw. 336. 2um.

Every D. must be designate properly in the entire take
 the designation. Barw. 336. 2um. Barw. 336. 2um.
 him - if the his name may be mistaken - still if he is en-
oughly designated in description he may take the ad
 if the name applies to any other person. c. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. Barw. 336. 2um.
307. 440.

This requires to be taken with qualification - Barw. 336. 2um.
 evidence may under certain instructions be introduced
 to explain the ambiguity. Atk. 32. 60. 11th 3rd.

X the description tho not strictly applicable may be en-
ough good by reputation - thus to A the son of B - A he
 was a bastard but the reputation of B. c. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. Barw. 336. 2um.
410.

But this rule does not hold in case of a Bastard born after
 it is made - for he must be capable if at all of taking at the
 time of his birth - but he can't claim the reputation of be-
 ing the child of any one but by continuance of time. Barw. 336. 2um.
 the birth of such a child is potestiva non legitima. 1. 11th 521.
Barw. 338. 2um. 507. 6. 60. 55. 11. 60. 11th 123rd.

There is also to the natural children of a man not en-
ough in the entire of 1. in enough enough. Barw. 337. 60. 11th 536.

A woman may take a term under the description of H. as do if she is impotent to be her H. tho she is not legally so.
 Rev. 240. & c. 13.

but may be constituted by an equivocal or ambulatory expression - thus under a devise purporting of the L. or a daughter may take, the former passes the money away until a son - & a son under this description would take, to the exclusion of an elder son. Rev. 940. Dyer 237
 Moore 114. Hal. 92

The word child or children is a sufficient description thereof to a fee tail & afterwards to his children. The children take a life estate in remainder, described by remainder. Rev. 344. 6. Co. 17. Moore 220.

The word children is generally used as descriptive persons, in which case the persons described take as purchasers. As if an estate is devised to A & his children - he then having children he & they take as joint purchasers, a fee tail estate. Rev. 344. 6. Co. 17. Dyer 274.

But if at the time a third party has no child children is a word of limitation i. e. the children take a life, they can't take in remainder as purchasers, because there is no remainder, & the word is not a general estate or purchasers, for then it would be - Hence A takes an estate in fee. 6. Co. 17. Rev. 344. Dyer 209, 1. H. 36. 456. 1. But. 219. 1. Kent. 227. 4. Co. 294.

A daughter may take under the description of purchaser or children, if H. & any of them is no son - so in this case a son being the exclusion of any other. Rev. 342. Co. 11. 11. 303. Co. 11. 1009. 1. Bq. in c. 212.

The description of a son may be general or special - the former means a son not being slain previous to his death - to assume the description. Rev. 346.

I General. As if I. devise to A in tail remainder to the next him male of the D or in case of happening to be the next him male is construed to be the D or his issue, & is construed by gift to such a stock family or house, & it must come to the heir purchaser of such an house. Caro. 256. How. 33. Dyer. 393.

If A is made to the particularly of his immediate heirs, if he has any, shall take it, but his collateral heirs of the whole blood. Caro. 347. 2. Co. ca. 310. 2.

If A is made to the next of the name of the testator the next relation of his name is to be taken as far as possible, and shall take. Case 357. mo. 6. 572. How. 32.

So a devise may be described by the words next of kin to the D or in which case the person answering to that description be the nearest, and being the nearest of kindred will take. Caro. 352. How. 277.

And if a particular estate to another is made, still the words next of kin are construed to mean those of those only, who answer the description at the time of the death of the testator. 4. Ro. 66. 207. 8. Co. 70. 234. 9. East 278. 279.

So the words the nearest relation of my name is a good description, but in this case relation is necessary collectively, & includes all relations in that degree mentioned by the testator. Thus let his brothers & sisters, & moreover if he has any no nearer relations. If the testator expresses such he means by nearest relations, persons that falling within the description nearly take - thus to next nearest relations, in the eldest & the eldest, here the latter the nearest in kindred as the former shall take. Caro. 350. 405. Ro. 66. 34.

Devises 33

When the remainder is after an intermediate limita-
tion, the devise takes an estate for life, & the inheritance
in remainder, the former is not ~~the~~ Dang. 923. 240. 2. Alth. 236.
250.

The words heirs of one in such cases construed as words
of limitation not of description, i.e. to ascertain the
quantity of interest given to the first devisee & not to
designate the persons who are to take after him
Rever's Exor.

When a purchase freehold is limited to the issue then
the word heirs is as appropriate a description, as any.
But as the maxim of the rule has been established
abolition a feudal tenure, it indicates as far as
possible to narrow the rule. It almost always states
the intention Per 359.

And here may therefore set this case take a remainder
a purchase since the description of heirs of the purchase
purchase is limited by the same & to his issue, if he
have none, the devise that the words heirs of were intended
as a descriptive phrase. 1. Eq. Re. 184. no. 6. 50. Thom 372.
Per. 958. 6. 60. 17. Salk. 224. D. Ray 333. 4. Per. 257.

Thus to A for life with remainder to his heirs for life only
So to A for life & his issue male - it takes for life only
by the otherwise if it had been limited to his issue male.
Per. 982. one bar. 40. 6. 170.

So to A for life & to his issue male & to his heirs for
life. A takes for life only. His issue male remainder in fee
Salk 224. Per 982. D. Ray 209.

Issue in its most proper sense is a descriptio personae, but it
has been generally construed as a word of limitation, except when
the intention to use it in its most proper sense has been
made manifest. Per. 960. etna 791. 1. 60. 703. one. 6. 40. 4. 1. 229.

a legacy. Bar. 976. P. W. 229. 1. 3n. P. 446. 2. Bar. 1010.

* But if the donor by his intention intends to give a person not him a male, it is not to take by the description of a particular him, but a person will take, thus to give him who is by the name of A. B. him A. B. will take tho he is not him general. Bar. 972. Hab. 95. Ed. Ray. 188. Ch. W. 464. 447. 465. 1. Kent. 372.

There is construction here apparent - indeed in a general rule of construction in all questions arising upon this, that the intention of the testator shall govern, if consistent with the rules of Co. D. 977. Dyer. 95.

But there has been much doubt whether if a state is given to a man, the him male or female of the man being under a description, it must be understood that the person to take is by purchase, so that he is as much as male or female.

But the question is the same if the state is given to the him male of the body of a stranger. Thus if the donor gives the body of J. S. will the ancestor take by being a son? It runs the rule not. Bar. 981. 978. See Ch. 442 & Bar. 2617. Co. Litt 104. 1. Kent 372. Ray 224. Co. Litt 24. 1. Co. 79 Conton.

A distinction exists between this & the case above. For a person without more succeeds him general; but here provided at the body, designates his female issue, whether him general or not. Co. Litt 27. Bar. 982. Co. Litt 19. 7. Co. 95.

A person in no sense assuming the name of a son will take under a name in preference to estate to an issue. Thus if a man dies and his wife be sole heir of his estate. So of a man stranger, ~~but~~ the man here takes not because the issue, but the interest which he has to take, to wit, a fee. Bar. 992. 8. Hab. 95. Ray 48. Sh. 308. Moore 565.

2. that the Devisee may not be disappointed at the death of the donor, as they would have before the death in remainder. 1. P. 268. 2. B. 374. C. 461. 9. 495.

These maxims have both ears, for the rule is a consequence in law, as affecting the course of descent, & the nature of the heir.

If I devise to her him by way of remainder, what would come to him as a remainder, still the case is within the rule, for the estate is not altered. Thus to my W. for life remainder to J. S. & being the next heir.
Rev. 430. 1. Roll. 626. H. 491. 1. & w. 111. 2. 80. 118. Talb. 234. Camp. 82. 1. P. 489. L. Ray 507. 3. L. w. 127.

So a devise for life and to the devisee heir, if no further disposition of the subject matter made is void - for he has all the interest which he would have taken, has them here. D. & the principle which circumscribes the estate for life. Rev. 431. 4. L. 26.

Changing details in provisions on an estate devised to the heir, does not enable him to take by purchase, the quality of interest is not altered - the estate is only circumvented. Rev. 493. Cro. Jac. 839. 919. c. Hume 144. Camp 72. L. 241. L. 222. L. Ray 728. H. 1270.

But it has been held that if the change is made by way of purchase, the heir to whom it is devised takes by purchase. Rev. 436. Cro. Jac. 161. 2. H. 286. 1. L. 492. 296.

The might of any is as the distinction. Talb. 258. Cro. 839. 919. Rev. 493. Camp 72.

If then a D is made which falls within the general rule to the heir, who at the death is a daughter, the death of a posthumous son will take away her title. Rev. 494.

So an alteration by D at the time of the heir's coming to the estate, does not enable him to take by purchase, though

city of estate being the same, yet if the devise is to the
 him by B. provides an alternative in the case of death,
 he takes the property, & so forth. Thus if I have a devise
 - for the D makes them joint tenants - they are not
 - Law. 439. H. L. 14th. Ch. 235. 236. Camp. 72. Bro. 6. 431.
2. Law. 147. 1. L. 11.

So in the last case of the D. he gives all his estate
 to his daughter, she later the whole in fee simple, & so
 she takes the half by the D. & the other half by the
 with her of the other half. & the D. is not to be
Law. 441. Co. L. 103. Salk. 242. Camp. 120. Bro. 829

And the D. may upon the general principle be good in
 part, & void in part as to certain things. Thus let it be
 devised one half of Blackacre to A. & the other half
 to his heirs, & that his heirs be the same & good as to
 the latter. Law. 442. Bro. 829.

A D. may fail of effect by the death of the D. &
 the devisee. As if to A. his heirs - & so. the D.
 later being the same of A. & his heirs - & this is the
 case even tho the D. is republished after A. death.
Law. 443. 4. T. 2. 601. Bro. 443. 2 Bro. 829. Bro. 25. Camp. 329.
1. Hod. 263. 2. Co. 319. Bro. 672. 1. L. 11. 97. Bro. 429. Bro. 503.

Warrors. A D. may fail of effect by D. is waiving the
 benefit of it. The waiver may either be express or
 implied. The waiver is express when the D. is a living person
 as to accept the D. The implied waiver arises from
 some act of the D. or from which it is inferred that
 he does not accept. Law. 443.

As a general rule in equity that if a person has
 a claim upon the thing devised, and afterwards after
 of a claim to the other part under the D. & the
 person, by means of the death of the person is im-
 plied. Thus Blackacre is devised to a stranger & a
 man to B. if A. dies Blackacre under the D. & the man

Devises

41

I can't have Whiteacre under the D. Law 443. 455. But
581. 1323. Fall 176.

This doctrine of implied warranty is founded on the idea
of an implied condition annexed to D. s. that the D. s.
do not disturb the disposition which the D. s. has made.
Law 443. 455. Fall 176. 2. Nov. 19. 617.

But it is not necessary to give effect to the will that
things devised be of the same value or of equal value
to that to which the D. s. has a claim independent
of the D. Law 450. 1. Nov. 235. 426.

In such cases they will require the D. s. to make
his election. Law 450. 3. 4. Fall 176. 2. Nov. 19.

But if the D. s. is a son & not a son-in-law then the
rule does not apply. Thus if I devise my house to the
highest bidder, & to my son-in-law, to which I have
a higher title than the son-in-law - the son-in-law must
take the house. I shall have his share of the profits in
the house, & the son-in-law shall have the house. Law 455. 465. 2. Nov. 19. 617. 2. Nov. 19. 617.

So if I have to which I have a higher title than the son-in-law,
is annexed to it by my instrument, it will be annexed
in such a manner as to keep the house - I shall have the house
both before & after - then the son-in-law shall have the house
after the son-in-law has made his election of the house -
to the effect that there is no D. Law 465. 2. Nov. 19. 617. 2. Nov. 19. 617.

But still there is an express devise in the will that a
legatee receives the will shall be subject to the legatee's
claim the house will defeat the legatee's claim there is an express
devise on the house to the legatee. Law 465. 1. Nov. 19. 617.

If the testator makes a thing to one person for the use of
a particular person, & says that shall not be a
thing given another person, then the testator makes
a thing under the will annexed to a particular
thing & I in many cases have a legatee in the will
of the thing given to the legatee - I demand the house.

But matter is not the subject of an assignment, it is not transferable by a party, & therefore not a deviseable part. Thus a D to C & his heirs. What estate to have is a question of L. to be determined by local construction. & is uncertainly of the former kind is a valid assignment of the estate a patent Barw. 574 447. 8. 60. 185

It is a general rule that the whole declaration must be given in evidence, to controvert the facts or a material matter in his D. as to give them an importance he has put upon them they would bear. This rule is sometimes relaxed & is now required to be written & since the stat of 1793 Barw. 935. 1. 1. 2. 64 2. 60. 178. King. 145. 5. 10. 68. 2. 11. 131. 136. 2. 11. 136. 9. 11. 1. 1. 2. 64 2. 60. 177.

The testator's declarations may apply to the D. as to the persons of D. as in both the cases mentioned above when they relate to matters of L. Barw. 478. 6. 1. 1. 11.

1st As to the intent of the D. Barw. 478. 6. 1. 1. 11. Thus a D to A & his heirs a D to his wife & children that he is an alien. Parol evidence is not admissible to show he is meant by he as they are a matter of fact & evidence than all the facts of the D. Barw. 478. 6. 1. 1. 11. 2. 11. 136. 9. 11. 1. 1. 2. 64 2. 60. 178.

So if T dies so he is generally presumed to be admissible to prove that his intention was of common law. Barw. 478. 6. 1. 1. 11. 2. 11. 136. 9. 11. 1. 1. 2. 64 2. 60. 178.

So when a D was an alien, more telling evidence by the testator may not be admitted to prove that the words which he has happened were intended by him to amount to a bequest of the residue. Barw. 478. 6. 1. 1. 11. 2. 11. 136. 9. 11. 1. 1. 2. 64 2. 60. 178.

So an a D to the testator's daughter, parol evidence of her intention that her husband should be subject to her H. estate was excluded. Barw. 478. 6. 1. 1. 11. 2. 11. 136. 9. 11. 1. 1. 2. 64 2. 60. 178.

2^d As to the person of the D. The testator's declaration
 cannot be admitted, as to matters of course known
 on D. As a D to A who is dying the testator, parol
 evidence was not admitted the testator declared that
 B should take. A can want to know what
 A's words mean, how he lives. There is no an
 inquiry. Perw. 484. Plowd. 354. Bro. 1. 492.

So when the testator was dying & named B, & named
 to him, parol is not admissible to show what A
 was meant. Perw. 500. R. Ver. 216.

But as to what are called matters of fact, e.g. the
 testator's intention, parol is admissible to show
 there if the matter raised does not then the words of
 the D. Perw. 487. 492. 2. Plowd. 68. 2. Ver. 216.

The rule is the same as to L. conveyances, but is not
 admissible to contradict the words. Perw. 423. 387. 512.
 2. Ver. 216. Walk 240.

Thus if I devise to his son A he having 2 sons, of that
 name, parol is admissible to show which of the 2 was
 intended for the evidence stands with the records -
 the ambiguity is latent - & the declaration of the
 testator par. sustains par. his proof that L. was
 parol and eldest dead. Perw. 466. 96. 5. Co. 66. 2. Pl. W. 197.
 1. Ver. 231. 5. Co. 158. 6. T. R. 671. 2. Ver. 216. 1. Pl. W. 674. 197.
 1. Br. Bl. 472.

So parol was admitted to prove, when then an in-
 strument was intended as a deed on D. R. 6. 710. 1. Hov.
 177. Perw. 490-16.

So if a D is made to A then being father & son of
 that name, evidence is admissible to prove the D. the
 testator did not know the name. Walk 7. 1. Hov. 177.
 1. Att. 416. 2. Pl. W. 136.

So if the D is a son, & the record stands if he is sufficient
 to be named, the record is sufficient to prove the D. in the
 10. Co. 21. 1. Plowd. 294. 6. 1. Pl. 671. Perw. 397. 499.
 Co. 1. Att. 3.

so much for the purpose of affecting an influence on the construction of words not intended as an interpretation of an will and perfectly understood. Per. 340. 391. Dyer. 397. Moor. 404. 4. Hall. 39.

On a Devise here no evidence is admissible to show that the Deceased was intended that a daughter could take. So you have a devise to the Deceased nearest relations, several ways are admissible to show that he knew certain persons concerning the disposition - but no further - his dispositions are not favorable. Per. 397. 4. 1. Ver. 21.

But in these cases evidence is admissible to give a construction, except they will not bear on the face of the instrument. Thus the word son is construed sometimes to mean grandson - but not if there is a son living - but if it appears from the D that the words were intended to mean a grandson, as passed is admitted to show that can be used to apply to grandson. So if in the same instrument there is a legacy to grandson. Per. 678. 2. Moor. 50. 2. 9. Ald. 910. 1. Vent. 345. Ray. 508. 534. 2. Lev. 253. 2. Moor. 63. 106.

Trust is never admitted to supply anything not written. Thus a D of 200 £ to the Heir's, but admitted to have no other issue was admitted. Per. 502. 2. 4th 340. 4. Hale 115. 1. 8. 115. 417.

So when the testator gave directions to have all his post mortem annuities to his wife, & it was by mistake omitted, evidence of the mistake is inadmissible. Per. 523. 4. Vin. 145. 1. 8. 115. 418.

So of 2. 4th 340. have also admitted proof of extrinsic facts to explain words of equivocal import as to the quantity of interest devised, i.e. when the devise stands with the word. Per. 502. 521.

4th Evidence is admissible as to the state of the testator's duty to ascertain the meaning of words used themselves or by others. But when such evidence is introduced with respect to the state of his duty, will be & require a considerable disproof. *That* which they prove is not what they say. Devises to A the house as to B - proof is admitted to show that A was tenant in tail of the house, & that the B was not only the remainder, in order to show that an estate in fee was intended. an. 5069. Hatch 244. 12. 49. 1. 49. 1. 49. 1. 49.

No evidence was in fact admitted to create an ambiguity when there was none on the face of the instrument. Then the house stands with the same duty as to the remainder. They have given convey. Rev. 42 or 492.

Can. 519.

But an explanation that does stand with the words sent in evidence - as where devised to the children of A & B - evidence was not admitted to show that there was an explanation intended. Can. 524. 599. 512.

No when the testator made the will of his estate he was entitled to say that he intended to give him 3000£ or more was not admitted to show that he intended to give the debt for the money claim intended. 1. 49. 1. 49. 1. 49. 1. 49.

1. 49. 1. 49. 1. 49. 1. 49.

No when the words of the testator's duty was not disproof of evidence was not admitted to show that it was the intention that his estate should have it. Rev. 524.

But proof is done of the testator's intent or admitted to what an equity must be implication ^{that} to establish. An equity means in general an equitable claim - but the meaning of the word as here applied to it is this

If I give I must give his lands by I will his children & mine
to them & I. B. Y. but admit the words - it may be
found that by accident his name was left out. 1. P. W. 674.
2. Do. 196, 7.

An estate is given to A & his children - if A has no children
at the time it goes to A as an estate but if he has
children it goes to him & them together - how far it may be said
to be capite the words by their exclusion. (C. 10. 9. Heab 49.
2. Burr 1316)

A phrase or term may be explained by parol - and may
sometimes be done. The words not equivocal, or
technical by any particularity. As where the technical
use of the words might make the language of the T. con-
tradictory. 1. P. W. 294. 2. P. W. 18. 2. Bull 472.

If I have a mortgaged estate I may use the first party
to discharge the mortgage - but parol may be sufficient
to show that the testator meant that he should be
discharged. 1. P. W. 79. 2. Burr 230.

If there are specific legacies it is that the testator may be
said to have the testator meaning the will is not that
if the legacies are in remainder, they are not accumulative
but go to the legatee. If it is in a will & another
in remainder they are accumulative. If there is a legacy in
a will & a thousand pounds in money, & 1000 in some-
thing else they are accumulative.

Revocations.

Will of T. can not be revoked till the testator death if there
is no revocation by him. Burr 100. 4. Burr 2012.

Revocations may be intended under general names. 1. P. W.

Devises

51.

They stood at L. before the stat of James 1st & they stand under that stat. Pow. 592. 129

Revocations at L. are of 2 kinds express & implied - express revocations might be either written or spoken. 1st By writing - as by a deed or instrument with nothing express in the words as to the fact, as if saying made & signed & delivered & so forth. 2nd By words & deeds in person. Pow. 592. 53. 13.

Apex 310. 1. Ball. 115. Pow. 592. 115. 327.

But in this case it must appear that the words are spoken *animo revocandi*. therefore when it is said "because the D. did not say the word & it did not have the word" but making no express reference to his D. the D. was not considered as revoked. Pow. 592. 115. 327. b. b. 151.

So words indicative of an intention to revoke at some future time do not make a revocation at L. Thus "I will shall not stand" and "I will alter it". Pow. 592. b. b. 151. c. b. 156. b. b. 156.

The same holds since the stat in case of a revocation is provided in writing it must be in writing. 2. East 406. 179.

2nd Revocations at L. may be implied. An implied revocation is by some declaration or act, if it is enough to presume that the testator intent to revoke must be ascertained. This is a revocation in L. Thus if a man says "I am a stranger, he says" or any such words he may have. Pow. 523. 535. 1. b. b. 592. 1. Heb. 259.

The acts of the D. or amounting to a revocation in L. may be in writing or in fact. Pow. 535. 534.

1st By writing - as if having made a D. makes another with it, the not expressly revoking it - this is a revocation. Pow. 535. 3. Wils 511. 9. Mad. 206.

... of all persons (the donor being a male.
Law 554. 4. Rev. 2171 2182. 1. Wils 140. 1. P. W. 304. Dury 98.

But in an alteration of circumstances an alteration in
the donor's intention particular circumstances. 1. Wils 191. 3. Salt.
292. 1. Dury 683.

So the child born is furtherance. 5. W. 3. 49.

The reason of the rule is generally said to be that in such
a change of circumstances, the testator is presumed to have
changed his mind as to the disposition of his property.
1. Wils 310. 1. Dury 683. 1. Wils 310.

When a man makes a will, he is presumed to be
aware that his estate is not a permanent one, and
the presumption is as his declarations. 1. 1 Bl. 322 2. East
336. 543. Rev. 556. Dury 31. 5. 1. Eg. 1. 413.

When the testator devises his estate to his executors
he afterwards married, & gave only a legacy to his wife
in such a change was held not to be a revocation

A subsequent marriage, only, is a subsequent birth of
a child only, is not sufficient to revoke.

But there is another case is the same reason - for in
case of a subsequent marriage, & birth of a posthumous
child, the testator is presumed to have intended that
the testator & executors of the known of the conception
at his death & an abortion should a premature happen
there would be no revocation. 1. W. 3. 1. 1.

Yet his intention must not be influenced by the
fact that in the latter it might be a legal effect

can a man intention to move ^{man} without an actual
 invocation 2. East 541.

What then is the force of the Accusation? It is to be
 taken as a tacit condition annexed to every act of the
 of making it, that the testator does not intend
 that it shall be a part of such a will as is
 should be a part of his condition - then the force of the
 approval of the testator is - Accusation - Accusation - Accusation
 idea reconciles the authorities 5. T. R. 58. 63. 2. Ea. 2 541.

But there has been no case in which a man has
 been held to be a revocator, except when the
 disposition has been at the testator's request & it
 is clear that if the testator's will is to be
 & it is clear that if the testator's will is to be
 by himself, then either he is to be held to be
 himself in fact the revocator or he is to be
 of intention and as in the case of the
 tacit condition is not annexed. Paw. 556. 60. 2. East 541.
1. Ea. 413. Doug. 954.

It is clear that we will not move a man to make a
 declaration of such events, & proceedings for the purpose
 of children 2. East. 3. Doug. 99.

But if a person has made a will, and it is
 English, & is clearly understood by an executor
 so that it is clear upon the whole that it is the
 sense of a will and that it was intended as a
 part of the testator's will - & in such a case
 during the will can do nothing. 1. And 161. 1. Bac 292.
5. T. R. 167. 2. Ea. 61.

But if the will remains the will & is not
 according to law it is not a will. Paw. 346.
5. T. R. 254. 1. Ea. 56.

But an utter alien in the full capacity of the testator
 tho such as to render him incapable of a free king or an
 exchange & descent of itself work a revocation for
 untill his change he has no power of revoking. There
 fore there is no presumed change of mind. There
 fore the same reason apply to the case of testament
 Cow. 71. 564. 4. Co. 61. 1. Co. 141. 1. Hen 105. 1. Co. 60. a. b. 234.

Secondly, an act in law amounting to an implied revo-
 cation, may consist in an actual or intended alien-
 ation in the testator. Cow. 565. 592.

1. By an alienation actually made. In these cases the re-
 vocation is in consequence of a hostile act of the
 intention of the testator is not required to be
 in any presumed change of intention. Cow. 565. 606.
 1. Roll. 114. 1. Co. 139.

The hostile act or principle is, that
 as the D or must be alive, at the execution of the D, of the
 estate devised, so the estate must survive in the same state
 from till the execution of the D, it must in contemplation
 of a have been in his power to make a revocation. Then
 any alienation in the D, is a hostile act. The
 revocation of the D, which puts it in a different light
 works an implied revocation. Cow. 144. 565. 61. 1. Co. 139.
 570. 7. 1. R. 99. 1. H. 135.

Such an alienation of the estate may be by the act of the
 D or, by the act of a stranger or a representative of the D. Cow. 566.

1st By act of the D as A sole or land devised to a third
 person will revoke the D of the testator having an
 absolute estate in such a devise the legal estate only
 returning the beneficial interest in reversionary estate.

Devises

this makes a finer D. of the lands void thus if a husband
devised lands under a power of then it is a stranger
to the use of himself in per, the D is void - as the
holder the estate is a manumitted estate is a man
purchaser 1. Bar. 192. 1. Roll. 72. Hall 399. Dyce 148. 74
Dum. 102 vide 1. Wils. 115. 1. W. 579. 1. Bar. 576. 7. 123. 279.
1. W. 417. 4. Bar. 1360.

So if a husband devise lands, conveys it in per & then to his
conveyance of the same lands. Bar. 576. 1. Roll. 616. Dyce 148. 86. 10.
1. W. 576.

The rule is the same if the conveyance is to a man
in which case the actual reason for it is changed.

Bar. 576. 1. Roll. 576. 1. Bar. 576.

So when a husband devised lands under a power of

Bar. 569. 1. Roll. 576. 1. Bar. 576.

So a conveyance of land to the use of the husband. Bar. 576. 2. Roll.
325. 3. Roll. 6. 1. Bar. 177.

The preceding rule applies as well to equitable as to legal
estates - As if the husband devised lands under a power of
then conveys it in trust for himself - the D is void. Bar. 576
2. Roll. 741. 579. 609. Bar. 154. 1. Roll. 411. 2. June. 102. 4. Bar.
1361. Dyce 712. contra.

And alterations in the estate or use, the before it was va-
riably but by the change in use, void to the D. As
when a tenant in tail devised lands under a power of
the purpose of having a recovery suffered, to the use of
himself in per; the recovery suffered void to the D. Bar.
Bar. 583. 3. Roll. 103. 3. Roll. 103. 3. Roll. 523. 7. 1. Roll. 406.

So if a man covenants to buy a fine to the use of such
persons as he shall name in his will, & make his will
& then name his fine, or purchase of his personal, his
will is void.

Darius

If the note is the same tho' the "Legal tender," is so
to be for the purpose of giving effect to the 6th, provisions
the Gov is entitled as if a new piece had been &c. &c. (see
Hovey 78). 1. Rank 614. 2. F.R. 675, 797, 999.

Still of a man seems to me, but I suppose he has
 done that only, as I find him to be from his
 the whole. Nov. 4th, 5. 3. M. 44. 2 H. 2 123.

A specimen of a leaf from this is much like a modern one
in the removal of the Bar. 583. 1. L. H. 86. 2 No. 167. 3. No.

no. 2044. 2c Hb. 533. March 319.2. 12.438

But leaves her name being, that interests may be
notwithstanding a subsequent renewal of them
if proper words are used, for that purpose. Thus
For ever all the estate &c. that I shall have or wish a
share at my death. 2^d Att. 174. - Inst. 237. l. 1. P. W. 578. Inst. 579.

76 if the numerical base is not complete at a test point
exactly, tho tho it is not reached by the numerical base. Law 52.
2. Alb. 193.

[illegible]

But now as the a' Ely union are extending agreement to make
land as in the old times, we are not to be surprised at

Devises
A petition to the court in case of a deceased person, if
made by the subject is an invocation of a American
O. C. 1st there - there is no other claim & as relates
it merely to the court what belongs to the
court. L. W. COL. 1. 2. W. 130. 9. Feb. 354.

But if the use of phosphate catenarite is as extensive
 there that of phosphate only, it must result in a considerable
 loss of it and in a further depletion of the stock.

Nov. 603. 1. W. 303. 3. Alt. 742, 51, 50.

State where one has made one act of sedition in a
estate before him, no harm is as much to know
that he did not intend to revoke - for the revocation
not provided on any subject in intention to revoke
as an arbitrary condition - for in state of intention
how much is to be done. 2. H. 26. 71. 2. 2. 141. 2. 2. 141.
177. 191.

It is here concerning to me, and the exercise
of a power of sales by an executor after the death
estate. And of the power attempts a position
which is ineffectual, either for the want of con-
sistency or apparently to take in the power to whom
the disposition is made. As when I have my son
and was a plaintiff at it without living of
mine. In having secured a mortgage made part
of it New 604, 60, 606. New 429. New 104. 1. 1. 614.
9. Att. 72, 9, 94.

The training was very good. Language instruction
not too much. months. In summer it is very
warm. - London de week. Arr. CO. 2. Home 697.
Ch. H. I. Ball. 618.

Devises

61.

An invocation thus effected being treated as a general invitation to invoke, the vispious may be actually by himself. As when the O or an invocation is made off-
 sent to the user and declared but not actually made.
 Rev. 607. 8. Canon 46. 90. 132.

So an intended invitation which does not effectuate
 there are in a party to take in the house of a church.
 There is having devised to a person and to a church
 invocation. This is a invocation the the corporation
 can take. 1. Roll 61. 2. 1309. 2. Rev. 60. 150. 9. 11. 190
 10. 60. 297.

So a subsequent invitation given to a person can take
 take as to the O and 11. Rev. 610. 3. Act 42.
 And an invitation in the state is not made by the
 of a stranger. As if I having devised as a person, I have
 before me Rev. 611. 134. 566. 674. 11. 60. 67.
 1. Roll 116.

But a stranger can make a d by turning in a church
 it if it remains legible. Rev. 612. 612. 2. Rev. 611. 611.

An invitation in the state devised concerning to a church
 invocation may be by the invocation of a person
 made but not consummated by the state of invocation
 invoked by that state. Rev. 613. 1. Roll 11. 2. Rev. 611
 Rev. 612.

A d may be revoke absolutely, on condition, or by a
 which is a part invocation.
Of Conditional & Partial
Revocations.

A mortgage in fee the at & an absolute invocation
 of a person is now considered in eqty, as can be a conditional
 invocation pro tanto i.e. the amount of

extent of the difference between the two. Pow. 64. Temp. 10.

But a lease to a stranger is an. a violation too late
of a promise. Yet a lease to the D. or the land owned to
commence from the D. or death is a total evocation
the D. of the lease are inconsistent. true for 42. v. 21.
S. 42. June 6. 6. 9. Do 517.

But a lean to the D. or to commence in the 1st time of
the D. or - ~~for~~ is no innovation for it may determine
before the D. is death, & so stand with the D. but for 40.
646.

As to invocation, I am finishing the subject matter. I
I deem it necessary to add that the matter is then to be
remains good as to the other 2. One devise, and the
daughter, afterwards an her man, with a part of
the same land upon her, the 2 as to the residue is
Pow. 627. 1. Roll. 617. 2. Kinn 720. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820.

of invocations under the English statute of 1700. This Stat. enacts, that no D shall be impleaded only by some other writ or process in writing, demanding the same to be impleaded, or by summing, claiming, or answering - or unless the same be returned by some other writ or process, or other writing signed in the presence of 2 or more witnesses, exhibiting the same to the D. Stat. the 1st. of Geo. 4. c. 14. is inserted in the Summary clause. This Stat. was enacted in the 27. Geo. 2nd. c. 47.

is holden that this steel enters nature's loins & spreads
strictly so called - but also to ligaments of varying changes
upon hand. Both are to be visited in the same way
rev. Prov. 690. 2. etc. 2.

It does not affect implied reservations, & such an
 effect is inconsistent with the intention
 of the testator. It relates to express reservations
 only. See *per curiam* as at 6 C. Rep. 630, 11.

Reservations under the last clause may be by
 other wills, as permitted in the first branch of the
 clause, by *expressly* as permitted in the last branch.

631.

In pointing out the 2 first modes of reservation the
 last seems to be only declaratory of the 1st. In fact, the
 words, with an exception in the first branch of the
 reserving clause, are construed to mean such a will as
 as would be sufficient to pass land within the reserving
 clause. For a will of land not complying with
 this would be void. *Per curiam* 47.632.

When the instrument contemplates in the last
 branch, not being referred to in connection to the
 words with in the reserving clause, is construed to be
 an instrument of reservation made, therefore not in
 quiring the validity of the reservation in the reserving
 clause. Hence a distinction between 1 intended merely to
 make a proviso & intended to make a new disposition
 of the same land & also to reserve. The former will
 be affected either if it comply with the requisites
 pointed in the reserving clause, or with those prescribed
 in the 3rd branch of the reserving clause. *Per curiam* 47.634.
 For if it comply with the requisites in the reserving
 clause, it is effectual according to the first branch of
 the reserving clause - but effect is attached with the re-
 quisites of the third branch of the reserving clause, as
 goes according to that clause. *Per curiam* 47.637, 1. 11. 638.
 10. Mod 467. Que. 460.

But if the latter instrument is a will, & the former a
 revoking one, it will not be effectual unless it conforms
 to the disposing clause. i. e. unless it is a disposition
 for the intention is to give to the ^{2nd} & second is taken
 from the 1st - as matters to be done the first only
 what is given to the 2^d Rev. 48. 68. 9. Mass. 48. 68. 79.
 1. D. H. 243. Ch. 44. 2. Ann. 741. 2. 11th. 172. 1. 407.

As to the testator's heir at l. the void, & the intent
 makes a person D. 1. Ver. 17.

But a disposing & revoking instrument need not ac-
 cording to both clauses - if it conforms to the disposing
 clause, the revoking words are effectual, & the latter
 branch of the disposing clause. Hence if a man is dis-
 posing instrument, it would be effectual to revoke any
 will without words of revocation, & it would not
 at l. l.

Revocations by burning, tearing, oblation, &c. are
 as at l. l. to effect a revocation in this way, because
 that the burning &c. is by the testator, or an in-
 strument, & by his instrument there is no intention of it as
 means in testimony l. 629. 632.

Suppose the D. is dead, & the contents in power
 the y. thinks there is no case of the kind, but the con-
 ogy to a deed lost & destroyed in time 3. D. 181. 2. H. 2. 160.
 1. Wils. 16. Stua. 1140.

Revocations effected by this act, as in the nature of
 implied revocations at l. l. Hence the act does not
 the same by the testator himself, can not be used
 for a revocation but is a revocation of the same.

are intended to revoke. Row. 697. 1. P. W. 346. 9. 11th.
508.

They are pages of an old copy of an instrument to a
 recipient as yet, as thus given can be but in two ways.
 Thus if the donor should have written as above - on then
 and it is made by mistake - and the wrong is his no
 revocation. Row. 697. 1. P. W. 346. 9. 11th.

But it is not necessary that the D should be totally destitute
 of any the slightest being with an intent to make
 a gift. Row. 697. 2. P. W. 346. 10th.

As when slightly to the D & shown it into the form
 of a bill of exchange - at once - and it is declared it shall
 not be his will.

So if I have ^{any} property at all & the testator leaves open
 a new one under the other or revoked. Row. 697. 1. P. W. 346.
2. 11th. 742. 11th. 52. 11th. 466.

These acts depending from their effect after the testator's
 intention, amount in some instances only to a suspended ex-
 ecution - in some to a revocation - in some to another
 act, intended to effect a new disposition - the the revoking
 effect depends on the efficacy of the other act. Thus when
 I thinking that I of his estate was complicated
 when it was not, I am off the seals from his will
 I am being informed otherwise - I am being
 however complicated his will - the it was not revoked.
Row. 697. 8. 9. 11th. 140. 1. 11th. 509. 2. 11th. 776. 3. 11th. 108. 1. 11th. 343.
2. 11th. 2514. 11th. 551.

A will obliterated in part by the testator appears un-
 der, may be good as to the remaining part. Thus when I
 having devised all his estate to A except B - afterwards.

much in the influence the part not otherwise necessary
good. Verob 812.

The instrument made under the name of devises of the
that is not valid. The testator's signature is on the face of
the instrument, unless it was intended to authenticate
the devising part. Row 499. 3. Law 86.

There is no stat in force in this matter & it of course
applies here.

Republication

And the revocation of not absolute by devises may be re-
minded by a subsequent republication - for making another
salutary till the testator's death it may as well be con-
sidered as rescinded. & before the testator's death as proved
declarations were sufficient to establish the will & so
they were sufficient to make the will. Law 689.

I. If the testator dies at l. l. & H. l. l. in his last illness
much favourable, as course may right words as a re-
publication. Thus if I having made a will of my land, should
purchase other land, & then declare his will as his
will, or virtually declare that it was his will, it
would be republished, & the land so purchased would
pass by it. Dyer 143. 1. Roll 614. Stiles 343 414. 2. Moore 44.
1. Root 81.

So if I having devised all his land to his extor devises
husband - & should be applied to, to sell the latter's share
suppose I say that they should go with his other land & the
would be republished, & the land would pass. Row 499. Moore 404. 2. Stiles 72. 1. Moore 264 2. Stiles 72.

And according to the report of the case the testator's saying
an application as above "my will is in my last will"

[illegible]

So any act subsequent to the invocation of a *Quorum*
 is in fact that it should remain, *neque* *annul* to a
republican - and determine it to be in token of our
 content. *Page 64. 1. Roll 577.*

and this is an important complement to the views of the people
well, now nothing to be a new nation yet the exposure
of the government to the public has been to be a new nation
which I think is a great effect. Nov. 1855. 1. Roll. 17. Group.
130.

But a noble recent improvement in roses, the *Queen of Wales*,
has been bred out to be no inferior to the *Queen of France*.
Rev. S. L. Ball. 1888.

And it has been held, in that the name is changed or
not taking on value and would be a superfluous
because the money shows that the holder can simply
be the 1, as this is holding, when the capital creates
to goods only. am. 544.647.9 Alth. 180. 3. 18. 168. 2. 1. m. 20.
for a no. 6. 493. 1. Rail. 18. 1. 6. 1. M. 405.

But the better impression seems to be, that the
 doctrine of conscience, as the source of all moral obligation
 assumed, if this it means to put ^{the} party under obligation
 to a republication of a law - can be a law in itself, and
 whether expressed to be an act, if there be no positive
 contradiction evidence of the law being positive law as
existing, & being made an act to it after conscience in
an invention of it as law and as not as of law.
 6. X. 1. 1. 48.

As to the question under the stat of fraudulent trans. 66 & 2 Geo. 4. c. 13.
 Contra. 1. Ker. 68. 442.

At any rate the annexing of a point on the coast line of
 not annexed, if it is purely by force, the point will be considered
 as a part of the territory, and will be governed by the law of the
 1. Ker. 443. 489. 3. 11. 322.

So it seems any annexation on a coast line, whether
 land or sea, will be considered as a part of the territory.
 Devises that this uniting shall be a further part of
 my will. 1. Ker. 663. 1. Ker. 589. 442.

Of Republication since the Stat of Frauds
 other than the English stat of Frauds, there are several others
 which expressly provide as to the republication of a will, but as
 the effect of republication is the same as that of devising rights
 to a person, that no caducous or intestate annuities, or
 republication of a will of land, will be considered as a
 republication of a will. 1. Ker. 329. Law. 80. 604. 2. 1. Ker. 944. 1. Ker.
 162. 1. Ker. 440. 9. Mod. 78. Bannister v. 172

Land republications therefore are at a stand. 1. Ker. 329. Law. 61.

As to caducous, says Barr. can amount to a republication
 unless it complies with the form & is required, and
 if published by the testator in the presence of 3 or
 more witnesses. Law. 664. c. 13. 941. 160. 1. Ker. 101.
 1748. 202.

Devises

73

Whence if a devise is not executed according to the Stat⁷³
a codicil which is thus executed will not confirm it
1. Kerr. 597. Benth. 35. Holt 742. Com. 175. 3. Mod. 262.
1. Burr. 356. Par. 470. 110. Par. 270.

Ed. Hammond has said that if a man makes
thus "All the lands which I now have & afterwards
moves his will, then not pay
by publication for the same then the law
put as if the O had been made at the time of publi-
cation Par. 688.

A devise may be republished by a new execution
such a publication may supply any defect
of capacity in the O. as if the O. is defective in form
I repeat it after he is of full age. Par. 688. 1. Burr. 356.
1. Heb. 189.

Nothing which will not amount to a publi-
cation in so, will amount to it in so of
Par. 688. Par. 189.

Of the jurisdiction of the court D.
The ecclesiastical. It has no jurisdiction of
land merely - It is possible for it to possess the
power of jurisdiction in the 2^d. Par. 688. 688. 1. Burr. 356.
1. Burr. 207. Burr. 396. 3. Mod. 311. 2. E. 2. 587.

But if the same instrument contains a devise
of a legacy of chattels it may be proved in the
law it is necessary as to the probate. But it is

But if proof of the attestation is required, that must be
 proving by a subscribing witness, either of whom is
 in time; this is a fact not necessary to prove. If there
 has been a probate of the will, in that it is not the
 direct evidence of the fact. Id. par. Rev. 708.

It is so, the witness is sufficient to prove what all
 have attested, but he must be able to testify, that not
 only the testator executed, but that the others did.
 Otherwise he does not prove the same fact. On this
 subject the Court may be seen Law 708. 716. & Str. 1252. 1271.

It is the the witnesses are all present to not neces-
 sary, that they all attest to the testator's execution,
 but it may be a mistake, and might be
 fatal to the Ex. If there are all stated as the validity of
 the testator, this is wrong. Id. & Str. 1252.
Law 708. 1. B. R. 365, 4. Rev. 224 & Str. 618.

But the testimony of a subscribing witness is not suf-
 ficient as the D. is. If the D. deny their own subscription
 the D. may prove it by other witnesses, or by some
 such as to the testator's sanity. On the other
 hand their evidence is in favor of the D. as is
 conclusive as the law. Law 711. 1. B. R. 365. Rev. 225.
Str. 126. 2nd. Hunt. 422. Shaw. 59. Galt. 264.

But the fact that they will not swear as to the
 validity of the testator, when the witnesses
 testify, is not a fact, and unless the suggestion
 to the contrary is supported by competent evidence.
Rev. 712. 9. Galt. 285.

Devises

74

of money at the

the usual meeting increase a little the usual price, the persons
and a lot to prove it in being especially at the same time
around the. The production of a lot in the lot is in effect at the
different separate parties of persons of persons who are
different in the lot of the lot. 1884.

If the bees are very thin, however, after the honey is used, it is difficult to maintain it, being more apt to give an impression as shown. The bees being here, however, with the first note of winter are 718. 1 the 2K.

But they will not be slow a second to ~~pass~~ ^{use} ~~use~~ ^{use} the Name as ~~from~~ ^{the} necessity to be fulfilled

It has been found, that ~~that~~ such a pathological Dis-
turbance, however, in order to establish a particular
class under it, even in Gily, that the individuals
make exception, that the male must be taken to be
male known of course, proof must exist in most
if it was, whether in 718 SPH. 193. Can 718 3. 4. 8.

The protest against a layman's interference is an established practice in England, and is based on a sound, and just, though somewhat antiquated principle. For the man has a right to demand that all of them testify before him to some extent. See 1 W. 210. 6 Dec 1874.

Let us let the parameter α be able to take on all values
and the path up to the multiplier α from the
product is no longer of the table.

What the mean is the same in Eng & in the sea

upon is himself also - has heard something said by some
 person he has heard to be on the behalf of the party
 claiming to possess the evidence 2 H. 557. Prov. 717.
 1. Oct. 1627. H. 174.

When a man is in a place where he is to take a journey
 there is some at the place is a servant of the
 proper place, an account of some of the
 things he has done the journey he is to take
 out an account. Prov. 521. H. 161. 1. H. 162. 1. 67.
 2. Feb. 611

It will be impossible to find out the
 to a d of a minute. will not be as it is true, the
 minute may, more & more. Prov. 523. H. 161. 1. 67.
 Oct. 294.

Contracts

A contract is an agreement on a sufficient consideration to do or not to do a particular thing - or is a transaction by which one party comes under an obligation to the other, and the other reciprocally acquires a right to what is promised by the other.

Contracts are either express or implied.

Express contracts are those in which each party stipulates in positive terms.

Implied are such as arise by operation of law out of the circumstances of the case.

In determining the validity of a contract, the first consideration, those expressions which are not binding ~~because~~ ^{by reason of the disability of the parties, or their} ^{ing. or their} ^{privileges.}

1st As regards to the validity of every contract, it is essential that there be the assent of the will of the parties, being sound and able to enter into the contract.

Infants, minors, idiots & persons of unsound mind are not ordinarily bound by their contracts. Others may be added, those persons whose minds are so affected as to be incapable of entering into contracts.

Of the contracts of the following classes of people - we will not say more.

The contract, out of which a contract may arise, is the one which it is, some rule in law. To the extent of these

up at the time of making them were expected of
 some particular persons, also are sometimes awarded in
 kind & sometimes in cash.

Generally however this valuation may be taken - the
 cost of infants brought to, removal of married women
 may be added in both so that the cost of making
 is to be proved will be shown in detail.

When the money out they are paid on the ground
 there exists between the parties without the least
 excuse to the point or guilt of either - as when an
 action is not a marriage or if they have the part
 of the same voluntarily done & natural in the same man-
 ner as the other had been so proved or acknowledged in the
 transaction.

It is of course a matter of course proved upon the
 facts of fact, they cannot then without regard to
 doubt make a claim the parties.

But they in all cases of fact this day, where the
 subject comes regularly before them, will not find
 the same part of the same quantity done. As one case was
 one they will not make in a family - & that is
 when they have been once under a family to inform
 they are done. But and from this all costs are
^{voluntarily} made which respect a family, will be
 added in cash. As where it comes to a family & it
 costs that it will not through a series of married
 parties but by married under family of the parties
 1000 £. But in other cases when the additional sum is
 in the same a capital sum as if in this case
 he had been himself to pay 1000 £. Kings one & a half
 the next 1000 may be or may not be in the
 proof this is not in the nature of a family but

in the nature of a *quasi* contract.

2^d Courts never lay out an award, but lay out an award to be made by the parties which were the subject of the award - as when one party has been wronged, the court will lay out an award to be made by the parties. Now as the award is made by the parties, the court never lays out an award.

So in a case in Pennsylvania, where a party had a tract of land for the purpose of purchasing a mill spring, which was found to be part of the land, the court was divided.

But in the present case, it is not the nature of the award, it is the nature of the award.

3^d Courts are not at all by reason of mistake that amount to damages - here there is not the full measure of the award & all the court is the effect of conviction.

They go so far as to determine every case where there is mistake, even tho' it is not legal damages - But where there is more money, the fear of injury to the person or property which induced the award, the court is bound to award the full amount in every case.

4th Courts are likewise bound which have inherent rights in them i.e. when they are destitute of some essential quality, or have some quality too much, such as inconsistent with the law, or the nature of the court, so that it cannot be carried into effect - as a promise to give so much without any consideration - the court will not be enforced at law, but it is carried into effect in equity, where there is a difference between law & equity courts.

When there is a bad quality in the contract as an illegal consideration, the court will not be enforced in law. & it will be frequently rescinded in equity. extra. out to do an unlawful act or to that extent if a consideration has been received the contract shall be rescinded.

So if there is an impossible condition - if the impossibility is a physical ^{one} the condition is void. & it is void. But it vacates the contract - but if from the particular circumstances of the parties the impossible is required to perform it when others might be not an impossible condition.

But if a contract is possible but partially illegal it is not void.

5th Contracts induced by fraud are void some in L. & some in equity only.

Whenever the fraud is in the execution of the contract he void at L. - as when one agrees to do one thing but does another - as if he should execute a note for £500. when he meant £50.

If the fraud is altogether in the consideration he is not void at L. but the resort is to equity only. to rescind - as in case of deception in selling a house.

But when the fraud is total. No man bought him merchandise at all of L. have rescinded the contract.

6th When the contract is solemnly required in particular that he void.

Quidem this head will be considered the state of L. & equity. & the remedy which a man must pursue before he can get it. & as it respects contracts express & implied.

such bonds will be considered & explained under this head.

I observe that consent is necessary to the existence of a contract. When consent is presumed the in fact there can be no dispute, as when a man has not done what ought to have been done, this requires a contract or the implied promise, that he would in due season in consequence of such neglect - he returns you gets partly by fraud, the & compels him to pay it back on an implied promise. So when a man has turned his back on you & another supports him the & implies that the latter promises to pay. This however is not per se an implied promise - for if he should advertise him, he would still be heard - So when one is married & yet gives a bond to let his house to a stranger, with out giving notice of his ownership - he is presumed to have retained his claim to the house.

No man may take an undue advantage of another's situation - As when one purchases a house of another in prison & distressed - the contract is void.

The promise of they are no intention that they will in some way attain the end they aim at - I am one at a time - they ordinarily do it by penitence.

Of such bonds as are void for want of a contract
Understanding of the Parties.

We have not I suppose correctly that the contract is made & that whether they are executed or not.

The contract is here supposed to be executed - even if they are annulled. So bonds may descend to an heir or a trustee.

I know his generally so that agent is necessary to me -
 him a grant. & neither say that the 2 portions are
 not to be sold - such cases - but this can't be true
 for the 2 know his impossible that such a person had
 agent - no agent is necessary.

It is true that persons in these right minds are not
 not in these cases - & the distinction is that it requires
 agent to meet, but never agent to meet. This applies
 to all cases of executed grants

But suppose that instead of being a deed of gift it is
 a conveyance for more than an equivalent. How does it
 not? It is clear that the husband can receive back the
 money - & then I suppose the consequence of the deed is
 not for want of necessity - for the estate a consideration

There is a position in Pow. that I think it is unav-
 our is supported by no other writer. He says that if
 a husband conveys his in a state of insolvency, his
 creditors may disavow it. I allow that they may refuse
 to receive the lands if they please - & this is true in any
 case of descent - but I think they can't avoid the cost of
 the sale - The question here is, is the cost void or
 voidable that the cost of a husband is void, for many
 in Ed. Ray. 316. 9. Wad. 226. Thompson & Lark

It has been adjudged in the Ct. of H. B. that a murder
 by a person (now composed) actually void, a const
 remainder depending upon the estate of the person
 now composed was not destroyed in such murder.

Again when a husband had given away money for
 land & a will was the only one is the person owner
 of the land, the Ct directed the Exor. to pay the money with
 damages Pow. C. 11.

It is by law that a man can't stultify himself - but if he comes to his right mind he can't avoid what he has contracted made during his incapacity.

It is much easier for you than a man for this - yet let all men & men children may stultify him - as shown as they may seem to be supported by nature. To them may be added (Bar. himself, a man a little more). His reason is that if a man might stultify himself he would appear degraded for purposes of justice. This doctrine but little notice.

It is evident in his ch. 2. contains strange, that a man can't on morning may stultify himself - & hinder in the Regentum & Council, there is a secret for education as to morning himself being allowed by him during his sanity - It is clear that at that time it was not thought of - I know of no case however that goes to overthrow this doctrine - But thinks it is the best he does say that the L. & Justice whether the ch. is long made absolute & now.

But it is of course decided unanimously, the best opinion that any man after morning might not make a contract made during his sanity - But the consequence of not suffering a man to stultify himself was that before his death the persons might have income and might, & then his heirs would have had no money - But they got along with this by allowing others to stultify him.

But there can commissioners are to be appointed to inquire concerning the contract. & decide, as in making inquisition, who will find an officer as to calling. If they find him a lunatic a writ quia is issued by the king the king being bound as father & mother to protect all his subjects their goods & estate.

has now fallen command. the person concerned to whom
 cause, why he ought not to pay her the money
 or why he holds the bond. This act is on the part of the
 woman because though the king is guardian of her estate in
 her own right by the saying by. Bar. 26.

Sometimes the ct of chancery will have a subpoena duces
 tecum the b & c to proceed on the land in the land.
 the proceedings are irregular by in chancery because it is
 a. Rep. 26. 4. 11th. 1701. 2. 11th. 1689. 2 Do. 11th. 2. 11th. 1689.

But when a suit is in behalf of a lunatic & an order
 is made to compel the performance of an agreement & the
 suit is begun before he becomes insane & is not to be set
 aside the lunatic ought to be a party & joined
 with the other atty's.

L^d for the costs of suits on the title of her
 estate & land.

2ndly the contracts of Tinn counts are H. & W.

4th of the contracts of Intoxicated Persons.

It is that there can only be set aside in ct of chancery
 not in ct of l. there is no sense in this for the man
 and woman ought to have the same effects in both
 ct. But the truth is that ct of l. are bound by every
 bargain. & there gave rise to most of the jurisdiction
 of chancery.

As to the ct of l. and that if a man intoxicated killed an
 other, he was to be punished with death because policy
 required. because otherwise there would be no security
 for our lives.

In this case it don't signify to say that Tinn. because
 the man was in fault in getting drunk. because the

some want a plea, to a man who has been banished from a civilized habit of contracting. In this case they have interfered.

They will not allow courts made by an individual person, when the individual was hindered by the other contracting party.

They will not do what they & that they will not side with, whenever an unreasonable advantage has been taken. There is a distinction at this time in 1st & 2^d it seems reasonable. There are however no rules to the point.

It may not be it will a clear ground to take advantage in this way. & of course it is not advisable in any. On this ground, if it were a man can, I should say it might be taken in both its.

5th If the Court of persons of that and others

There are subject only to the jurisdiction of the Court. This may well inform you that there must be some order to obtain relief, but in truth to always a power to deal with such a person. Thus if the same was given had been made by a sensible person then I must not have interfered.

It is clear then that the necessity of understanding is the ground of interference.

On this ground courts of justice are made as if it were not given the jurisdiction that they had not the complete use of their reason as if the court was made with a very inadequate consideration.

The contract system of firms from the mechanical change, decisions is an excellent system of accounts but without these it would be a mere record. The sales of the stores there is no definite as of day, but the total to indicate a general record of the R & P business for the budget of day.

There is a class of cases where both are ignorant of the mistake, & the court stands as when I claim the same thing under different titles at L. & S. alt. as the suit I argue the difference my compensation - it turns out eventually that the facts enough to it on who makes a mistake yet the court measures the facts as given up - this case supposes no contract. 1. 11. 72. 2. 11. 32. 2.

There is this kind may be supposed that weighing costs about a suit at L. Comp 32. 2.

There is another set of cases where the error has a great influence in the result - as in case of purchase, where the parties were in error about the quantity of the out as when a new king brought of a man in that error was - there was a great error about their quantity & value on both sides - The mistake was the quantity of the cost - and then account for it at the time given.

But altho a mistake is made if the matter of a difference or more pleasure, the court will stand & no compensation in return.

If the mistake was about a thing of a quantity or utility, the court will stand, the something will be given in damages, Bow 147. 9.

Now such a contract is not an offer, can be a plea, this
 doctrine. When one sells a good, against one who wishes
 for a day, as a slave - This would seem to be so, but
 would be void on account of fraud - But this taken
 from Justice; & there the seller was ignorant of the
 fact that the slave was a female, having bought it
 another time the out ought to be void, for both
 are deceived.

But when a man sells a horse under a mistake, the out must be set aside. & then I suppose the
 principle that the seller supposing he was selling the
 horse that he was selling a good horse - But the
 course of proceeding has been different - & ensuring has
 been had under the idea of fraud & the horse sold
 in the hands of the buyer - the buyer having not
 meant to buy.

The first thinks that such a contract is void - for the
 mistake fact was the sine qua non of the out - he
 thinks the decision will be so eventually.

So far we have proceeded in considering the case of
 error.

Now we are in full party of what he had a right
 to know might motivate a contract then he was in
 in either party - These contracts may be set aside, in any
 the case in law.

A case of this kind when a parent who could trust
 his child of its orphanage house, made a will & in
 that gave a legacy of 10000 to his daughter on condi-
 tion that she relinquished her orphanage portion. But
 if she took her orphanage part she was not to have
 the legacy - not knowing the amount of her orphan-
 age part, she agreed to release of it - it proved to be

I show by a B of L. she was not here under the
 action till she knew the value of her authentication paper.
 On this ground it was that a contract was
 made.

It is known that a contract made, which concerned all
 her rights will be vacated - then was ignorance
 of a fact not ignorance of L. - Ignorance of L.
 It applies only to crimes & tort cases.

Such was the case of the schoolmaster. This was in
 fact ignorance of the L. & not of fact. It was the
 contract was not void.

That of Contr. to do what is impossible to be
done

Let us see one is not impossible. Any impossibility is
 must physical impossibility - & not such as arises
 from the particular circumstances of the parties
 contracting. As when one contracts to walk four miles in
 a minute - as when one contracts at a certain time to
 furnish a man with the two deniers. This was impossible
 in the time then.

When a man covenants to do a thing which from his
 particular situation he is impossible for him to do. He is
 liable on the cont. As when one covenanted to give a
 sword like a given which belonged to another & which
 he could not give. In such case he will be liable on
 the cont.

To be sure every in such case will not draw a
 complete performance of the cont. unless it is the means
 and power so that he can comply - as when he

around the land at the time of our purchase & a tenant
sold it to another before the time to come to the com-
mencement - here they would compel him to come under
the covenant, by a penalty, which if he did not in
disrupting the covenant &c. In. 11. ca. 117. C. 11. ca. 117. 203. 204. 205.

Another case of this kind was the Bentley case, when
a man bought a house & agreed to give one bushel of
wheat for the first year, & for the second year - this probably was
impossible - but I should say that was not the case
of the first year in the last case. But the court sustained the
action & introduced a sum of damages for the value
of the house - but the next rule would be to have the
value of the house or thing to be delivered.

When a contract is made at the time of making it, but
impossible afterwards by the act of God or of the law
there is no obligation to perform it.

When a man has given bonds for the performance of
an act, & before it he is taken on estate - this is not such
an impossibility as was contemplated - the impossi-
bilities created by it are those which arise from some
fortune &c. made since the contract, which prevented its
execution.

There is a set of cases in the books which I think
are settled among.

This is a settled point that to perform a con-
tract is impossible is sufficient to discharge the
bond - but where a bond is given with an impossible condition, the
settled point is that the bond is still good, but the condition
is void. See above thinks the doctrine is settled
of principle.

In our case where the impossible condition was

give himself, then the b. l. is good proof, to show the illegality of the consideration.

There is this distinction to be noted with respect to admitting legal proof in cases where a court is unable. Legal can't be introduced to show that there was no consideration. In such case the proof must be of a high nature, as the thing to be disproved. But a party may always be admitted to show the turpitude of the consideration, to show that it was made mala fide.

It makes no difference whether the thing is to be the consideration of the court is material prohibition or material in re. They are ~~are~~ equally used 5 John 327. 335. 5. 160 m. on Lou 30.

If a man enters into a contract lawful at the time or making & money is advanced on it - & afterwards a position to its performance becomes unlawful, the law is a man an action to recover the money that he paid.

A court not to follow one calling is not binding, he came to us hoping - but a court not to do it in a particular place is good.

As if a man gives a bond to remain in his prison till he pay for his horses which there was no exchange the debt is void, he can't be retained on the bond, for it is void - a man can't by court make himself a prisoner - so of courts of the like nature are any other subject.

All courts which have a tendency to violate any duty, or trust are void. 10 Co. 76. bro. 5. 179. 230.

Engagements too that tend to promote and aid in a
 but the doing an unlawful act are void. As a writ to
 indictments are for publishing a libel.
 See 5 John 32. 7934. 5.

There is an exception however to this by Act of in-
 demnity - as when one who uses to do an un-
 lawful thing did not know that he was unlawful -
 the statute a sheriff had arrested a man who
 was justly & brought him to be a landowner. & he
 told him not knowing of the unlawful nature
 of the arrest an promise to save him harm.
 If - altho he is liable to the party wrongfully
 imprisoned, the sheriff is liable also to him in
 this court.

But when the doubtfulness of the thing
 is prima facie doubtful, no harm intervenes. does it
 at law. 120. f. 61. 1. Hall 53.

Not only courts to indemnify are for injuring a
 third person are void - but all courts which tend to
 effect a wrongful purpose are so. 100. f. 87.

No remedies can be taken which is good for an
 unlawful act. 100. 60. 4.

It has also been said that all unauthorised courts to
 assign the feelings of third persons are void as
 in the case of Bin case - too void as contrary to com-
 mon law - as tending to introduce indecent acts - when
 a writ is concerned if unauthorised indecent acts may
 be introduced. 100. 72. 230.

Not tending by itself stand on the same footing as
 all others - all courts at law & those not regulated, don't
 change their nature by being transferred to third

known. It returns the party to whom it is due to another, all advantages being the better of them by the obligor, which might not be they remained with the first obligee. If a note or bond was expedited between the original parties for a sum of consideration, however, it may be treated as a gift by the obligor and obligee. Thus the 4. principle, that when a man has put it into the power of any to receive of him he himself shall suffer and apply being intrinsically a principle of policy.

With regard to negotiable instruments it has been held, that when they get into the hands of third persons who ~~shall~~ being parties on them in their own names no inquiry can be made into the consideration. If the contract might have been void between the original parties, yet it is good by indorsement.

But if he void at first nothing will make it good as the obligor. Take a bill of ex. the indorsement may go upon the indorser - but I have found no case in the books where he has gone upon the drawer. The drawer will then go back upon the drawer. If then the consideration may be inquired into.

So in all cases of void under the stat. of gaming & usury - when the contract is void originally upon its own merit can make it good for the words of the stat. as "to all intents & purposes." Then the consideration might be inquired into between the indorser & the first obligor.

When a contract is void by reason of the illegality, as the consideration, & money has been paid as it & the value the money may be recovered back.

To all the foregoing doctrine there is a set off called
 case - When the money for an illegal court will not
 be recovered, the parties are considered in pari delicto.
 11 B. 40. Bur. 1012. Comh 770.

There must be a complete agreement between the par-
 ties to constitute usury. When money has been advanced
 on an usurious court, the legal rate of interest will
 be obtained as if no more.

If one has obtained money by gambling as the other
 has in pari delicto, the winner will keep the
 money. See Stat. N. Y. contra.

When joint partners enter into an illegal court
 with a third person, & one of them pays on it without
 the knowledge or request of the other, he will not
 be considered to refund one half - as if he consented
 or was present to the payment, and did not protest when he
 knew it was about to be paid.

There are also articles made void the security, only
 as to the court - here the court, the intent to
 void the securities of parties - as if all securities
 were void - The law is now almost obsolete
 as the security of the court.

So it has been said that a misnomer bond for usury
 is void, but the court still stands.

The English stat. in gaming exemplifies both these
 points. By stat. means that to one to gamble with
 can be recovered on the court - tho the security of
 one is given is void. so here in N. Y.

But when one enters into a court & is it against

by bond to pay money over at gaming, the court
of necessity are rather indifferently said. Law 107.
1. R. 172. Par. 2. 15.

We have gone thus with a 4 new of illegal contracts
— we shall now notice some particular kinds — the
principal is that kind called

Upon our bonds.

As to the history of this business — it has been
taken — & any taking was illegal — & the money was
ours, denoting something, under which, & the first
as James who has been guilty of this offence, was at
their death reported.

At length a little interest by
consent began to be taken — & a rate was made
by which those who took more than ten per cent
were punished. & the court, although void — so by im-
plication ten per cent might be taken — the state of
James induced this to eight per cent. the rate of one to
six, & that of twelve to give at which with it was
controversy.

The rate consists of two parts. It punishes the
contract — where there is more than five per cent
received in it. But it now punishes a more severe
one, which he takes more than the benefit of the
that case he is obliged to the penalty 5. 60. 64.

When the obligation is on the face of it for legal inter-
est — & at the end of the year ten per cent is taken, the ob-
ligor is liable to the penalty of gaming, the the court is
well guided. If however there was an agreement to
pay more than the lawful interest, at the time
of making the contract, which may be very possible,
the statute might be void — as is the case, lawful
interest is included in a separate note, the whole

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It must however be paid & paid of the sum
not less than £500. 818.

to cost as much as at the time of agreement, then
more than that but not without contribution to be given

This is unusual in what part of the year the sum
is paid it may be well to fix at the beginning
of the year the sum it is at the beginning this is
an improvement of the principle but does not fix the
commence as was J. H. Moor 647.

As to the more than five per cent is never given
in when there is a loss of the business - On the principle
as in the case of collateral contracts the loss and must
be nearly tolerable.

In the case of insurance upon lives where the husband
is a free man of no consequence if the sum paid is
tolerably great then for when the sum is the whole
business is not less than £500. Moor 318. Doug 708.

Sum of each bond five hundred going to the principle
one out of the debt with respect to what is here said
is left to the point of the time - husband must stand
in of the principle & not of the collateral security at
the circumstances of the affair must be considered.
see 8. 678 8. 601.

When a man agrees to give for £100. £1000 at the end
of the year if any other business comes during it that
time he having a reasonable priority of claims before
the husband was tolerable. Doug 548. 12th 8. 60.
67.

A question in the U. S. important to be settled, how much

little is in the books, is whether an obligation given at one place, may bear the interest of another place when it is actually & legally? As suppose one in Boston to receive money of one in Philadelphia who happens to be there - the note is really made in Phila. but to be paid there - can the note bear some low rate.

If a note of \$100 had a note as ^{one} of high & being there took a new note, the note would be at 8% if it were by one - but it might be lower & for not interest.

I ought not to want to be complete to make the money paid - it is then good as a paper money here. I had my account made in N.Y. might be necessary at 8% for Phila. when the note was made by the parties living in N.Y. & designed to be paid here - & if they just crossed the line to give it the appearance of being paid by.

The law here where the note is to be performed is to govern - & where can, business in N.Y. money to a long distance may be paid in N.Y. and the way to be the necessity for such interest at 8% and two & 26.

No innovation of more than legal interest will make a bond unenforceable, ~~and~~ there is a contract and a violation of the parties contracting - there is mistake but not mistake among but to 183.

A contract may be proven erroneous by proof of fraud may be shown this to want it.

Also a mistake in point of fact will, even if it will not make a contract free from being unenforceable - as if a mistake in computing the interest established by L. Geo. 6 101.

Contract

///

I should say the old court would be a more desirable
 available & desirable.

There has a new trial in this court & with the
 principles of it, which a more has been made
 parties? I think not 1st there is no action in the fact
 of law or equity but for one 2^d for an action of fact
 that no new trial in the fact, which is a trial for
 a finally has been brought & parties, and it is
 the fact has been guilty of a fact - Apper this is
 the fact out case - I think the fact is that it has
 for the old &.

The form of the suggestion of new money is
 this - then apply to the court which is in the
 court - not to have it at once - but if there is
 the rule of interest the it is of a new money

I know of no principle that would prevent this
 with us, the trial there is - because we are not
 more who has an adequate remedy at L. about money
 to them - But this is no reason; you apply to
 clearly as here and then point of view they are
 they have an adequate remedy at L.

There is one court which is illegal & about which
 there is something peculiar - the law is not
 no certain law - as when a new court is to be
 new has been - this is illegal from motion of fact
 - & the law for which has been continued makes the
 difference. 11. Co. 59.

We may agree not to carry on his trade in a point
 where place lawfully. 11. Co. 59. 11. Co. 172.

Our contract must be upon good consideration

his former life all other entry made. By it must
that to a necessary exception to the fact that you
can't look into the consideration of a house but
you can't cut it out - not however his own without
a consideration. Sh. 139. Moore 118

In this particular kind of costs you may go on to
the consideration by parcel. If not found to be
good you may set it aside. There is coming to the
parishable & get in subject such costs are awarded
by 6 L. R. 141. 191. 3. Rev. 259.

It is not true now that the want of considera-
tion must appear on the face of the instrument.
shown formerly.

Costs to be destroyed in the body, because made in
the instrument or through or up from.
Some of these may be made at the House at 1849
Whatever cost is obtained by deed is not at. L. R. 141
up at 1849

What then is found to be of 2 kinds. Damages of your
person and of damage to your person either must de-
stroy a cost.

Death of your person it is when one is destroyed
of his liberty of locomotion & to maintain it he in-
tends into a court to give the security - then must be
must enforce it he in person it must be in the
street.

Damage to person is when a man is struck in the

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must be attended by entire consent. He must be threatened with such a measure as to give the life liberty or great bodily sum as in humanum est. There is no such thing as this. For what is done for money to one is not so to another.

The imprisonment to constitute duress must be a true fact - i.e. without any 1. Winn 319.

When a man is lawfully imprisoned, & a contract is entered between him & the party imprisoning him, he is to give the just value. If there is any apprehension of doing so duress - do of him a threat. 1. Winn 316.

There may be duress arising to the parties of that is duress. As if the party is in need as a clock to obtain security. But it is duress. 1. Holt 966. 1 Lev 6th 1. Winn 320.

Thus fear of duress as applied to the parties. But it has been questioned whether a contract made to obtain the release of a person in duress is void. The parties are contradictory. 1. Winn 317. 16 916. 2 Brown 266.

Reasoning from analogy is unavailing. A battery is a tort. It is a tort to induce the tortious act. It is a tort to induce the tortious act. 1. Winn 319. 20.

As to whether it is a tort to induce the tortious act. It is a tort to induce the tortious act. 1. Winn 316.

If you give a bond to a stranger to secure your property or to avoid a court at law, it is a contract. It is a contract. 1. Winn 317. 1. Ray 959.

Duress by a stranger at the request of the obligee, is the same as if by the obligor himself. 1. Winn 321. 91.

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Another question that has arisen is, whether any damage to party will enable you to avoid the contract. This disputed. There is nothing settled 2 Kins 316. 317. 11. 110d 222.

Suppose a man is under duress for money & gives a bond £20. forred instead of £40. which he was obliged to give (this is duress) tho he consents to give the £20.

When it is compelled to do such a thing by duress & afterwards does it. its duress is not taken away to the promisee of eqty. 9. Kins 917 112.

You cannot give duress in and under the same contract. It is a general contract. you must show it of the £20 to 119

How far will eqty go? the law must be of some good effect. The question in eqty is, would the court have been made had there been no force.

In case of force in 2. Kins 497. Is immaterial how great the injury was the person himself has committed - if he did not do it voluntarily 1. Kins 11. 1. Atk. 11. 1. 11. 112.

Eqty that is not under duress & eqty on account of fraud. Where in such some times more than one kind of duress is at eqty & sometimes in neither and the remedy is in a court of law or equity & there is a necessity of an application to show to the jurisdiction.

Those which are void by reason of fraud. If the fraud is in the execution of the contract it is void by law. This is so if the person executes the contract after full knowledge of the fraud.

2. When the fraud lies in the consideration, it is not void at law on the principles of the 8. 6.

As it respects real property they will recover it out - here equity does not seem to better have prevailed as to real fraud.

If the out respects real property, it is not uncommon for law to interfere if the fraud is total. Thus they will do either by rescinding the out or giving an injunction. If the fraud is not total, they will generally interfere. If then it be practical what is to be done I think not. L. R. H. seems to be a compensation lies in damages. J. R. thinks the substitute of principle. How far is to be upon some system they never receive. & never intend to make. There is a great out in the consideration, where it is practical ought to be void.

There is one case where you seem having an action at law where you have paid a sum of money for an article, & the fraud is total. The remedy is, the action for money had & received is an equitable one. I am in the great point as to compensation in damages we agree. But as it respects fraud in the consideration the plea at law is of little use. & thus all our Acts are joined.

Should upon this know.

They are totally void - this from a principle of policy. This fraud may arise in a contract of warranty - concealment of facts which in good conscience ought to be revealed is void.

Fraud in the execution of a contract is void at law.

in the consideration being total will in law be void
2. 60 2.

All fraudulent contract collecting, and in legal form
will be voided in law.

Contracts obtained by fraud, the defective legal form will
be voided in equity - as where various acts are done
for much less than its real value.

They may interfere in a variety of cases where an
unreasonable advantage has been taken of one's
situation, & this will destroy the contract. The case of a contract
made in interest upon a trust is not void to this effect
- but I doubt the propriety of it. This is founded in
justice. 10th 48. 2. 2d 449

They will set aside a contract where undue advantage is taken
of a necessities man - or where one of 27 years of age
was thrown into prison new year for a mortgage & had
agreed not to be imprisoned the death of a wife, & so
- a contract was made the which he paid with it at a
small price - but voided for this ground where value
given in the case of a sum. They never void the contract only
so far as to be illegal. 10th 48. 1. 2d 440.

Inadequacy of price has been ever held a proper subject
of interference & is the ground for voiding a contract
in a contract. As it however it provides no ground for a
contract. Perhaps, note of price but of something else that
ought to void the contract. If a man agrees to sell his
farm worth 1000 £ for 50 £ & there is nothing more in
the contract there is no voided but by the opinion of
the court that inadequacy alone would void the
contract.

It is very much in doubt & opposite my opinion & I do not take to say his d. t. It is a man of large size, but being bound by the law of the land, to pay an half their value. The court decided the point. They require upon the condition of paying back if any thing has been received. 1 Bro. 167.

All the cases will be found to have proceeded on the ground that undue advantage was taken & the bargain an unconscionable one. 1 Bro. 157.

The bankruptcy case has introduced a new principle, but when a debt has been made, the unconscionably, one may recover the value of the thing sold. They require it to be paid the court according to the terms of it. This decision does not bear an argument - for not placing the parties in statu quo. Here they consider the debt as paid to the extent of the value of the thing sold. 1 Bro. 111.

Under the head of fraud upon third persons are included all debts entered into with them for exportation. These may be considered as radically corrupt in law - the they ought not to be ranked under this head, for in no other way than this can fraud be practiced upon third persons & so done away, as that the courts may be relieved. 1 Bro. 111. 2 Bro. 14. 1 Bro. 112. 1 Bro. 113. 1 Bro. 114. 1 Bro. 115.

This is more properly included to the head of undue unconscionable advantage - because it is to the advantage of a young man's reputation, & honor of friends upon this point. 1 Bro. 111. 1 Bro. 112.

How far this principle is carried, & how far it can be applied to all of this kind - they will be decided in time - and it has lately been decided, that no action is such

can be in contract at the time of the breach, but not after.
1. 11. 116.

The rule is, in contract, once a thing is done, the
vitiolation is not a breach. It is the breach of the
contract, but the contract is not to be in breach. 1. 11. 116.

It makes no difference, if the obligation is a fixed
- unless it is a negotiable instrument. the only remedy
the owner. 1. 11. 111.

But of course, when the party of the debt is not
in the act, means a compensation for a wrong
in damages.

This debt includes all kinds of fraud. It includes fraud
in all those cases where there is either an express or an
implied contract. many cases of fraud include the idea
of a debt.

The every species of fraud where there is no express
contract, an action for wrong done & recovery of
damages.

An action will lie for fraud in a contract, where the
contract would not support an action - as in the case
of gambling - no action lies in a gambling contract,
- but if one cheats in gambling, an action will lie
for the fraud. because there is an implied contract that
the man shall play fairly. - 1. 11. 116. Moore 776.

In a many respects as law, there is a rule in
fact that it will be profitable - & for goods in this
action, will be in the case of a contract, moral, or
in a contract, the opposite side to a fraud, affords.
1. 11. 116. 1. 11. 116. 1. 11. 116. 1. 11. 116.

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The most common cases of *L. m.* are those of pro-
in, rather can't make the is: answer. But the is
no doubt of the *L. m.* the rest of. But the is
go on the ground of some, *L. m.* - *L. m.* is the
book of the *m.* is a paper of *m.* & *m.* to
to be in *L. m.* there is a *m.* in *L. m.* -
- but if they are not in *L. m.* - *L. m.* is not
the, unless there is an *L. m.* *m.* (Book, 91)
Salt 210. 211. 212. 213. 214. 215.

I believe there was no distinction of this kind either.
Both wrote - the L was much as it is now, but the
unintentionally was diff.

I take the same liberty to do this if I can give a thing to him without which it has not up to himself is under a compulsion, he is forced, & it makes no difference whether there is a necessity or not. If he will not contribute for his use, knowing it to be necessary for his friends - if his account is right, that he is bound to all. L. B. 54. No. 1. 469.

On the case of Johnson you will find the
idea entertained by the Ct of grand inquest was - there-
was that his owner of my that the spot should be re-
spected by the author B. I. & C.

In all cases where a name concerns a fact that good annuities ought to be restored & which has an effect upon the rest in word. 1. Ps. 46. 1. Rev. 18. 1.

If he makes a false affirmation, knowing it is not
so, he is a fraud - if he conceals its truth
it is to be understood a fraud, for when an action
with its as well as the community. & the latter keep
in when he sets bad misdeeds is guilty of a fraud. for a

lye. 1 Ball. 101

In all other cases but fraud where a man has a debt by his s. both are liable - common is no ground. There is a debt - but in fraud his debt is to the other - is liable. 1 Ball. 11. 1 Ball. 282 L. Do. 410.

When a s. becomes bankrupt - none at a time. Yet it can be liable to return a s. debt but not. But a rule that s. should not be liable in fraud as well as in other cases.

For the other hand the s. is liable the time is no counting in law - he has hired a man who has made for him.

There has been a great question, whether a minor is liable in case of fraud - I believe the old authorities are against the minor. 1 Sid. 129. 258. 1 Linn. 69. 1 Kel 718. 114 1 L. 11

The argument has been that a minor is not liable for his fraud, because he is not liable on his contract - minors are liable for their tort. & fraud is a tort - what then occurs here? They say they mean to be bound in a contract - but the s. & the other can bind a parent thing - he may not be liable on his c. & of his estate for his fraud.

Again minors may be punished criminally - there have been some opinions contrary to the old doctrine. De Haven thinks he argues in favor of it. I think he is. But that he would, I cannot determine from it that, from actions of parents, minors should not be paid. The case reported in the next s. s. has been supposed to be an exception - not to be so.

Fraudulent tongymer.

There is a small enclosed island 4 ft. high on the coast
between the islands.

A conveyance of property for the purpose of fraudulent retention
is a fraudulent conveyance.

2. This is said against all other accidents & things in, by the
construction of the text. Where the conjunction is honestly
voluntary, there is a difference. Where it was in consid-
eration of money, the same in most cases, as if it had
been said for a valuable consideration.

With respect to notations, consequences, when there is
no imagination at home, they are not used as it was
quite subsequent extern as the principle of the o. o. this
is not so now. It has not been intended at the time of
writing it, and it is not out of it - now if he was
sensitive.

The answer on which the stat law is based institutions at
the time is ~~not~~ as ~~fixed~~ - while there so many more are now in the
process. This is ~~perhaps~~ a ~~point~~ ~~of~~ ~~discovery~~ ~~and~~ ~~function~~ ~~of~~
~~this~~ ~~law~~.

The principle must be to treat similar cases
equally, as they are, & not color, taking into view the 14th
Article in all the states - at the same time we must take
into view, precedent & convenience as they exist from having
accepted the 14th Art. - not adopted it, but in some
of the states.

have well said in the modern republic, some opinions got
'perfectly correct' - & that of such a nature that they have
made no change in the F. L. - that they are in accordance
with them remain sent too, with the others.

the fraudulent conveyances were void by the old b. l. might
as to existing ones. 5 Co. 83.

In this point the stat. & b. l. tally, precisely - But the stat.
has carried the law farther than to existing ones, they were
void as it suspected subsequent ones, only when they were
made for the purpose of cheating & defrauding at b. l.
Br. 664

Since the stat. such conveyances have been constantly
made - but the stat. declares them void as existing, not
the grantor himself. 4 Hk. 691.

The R. as now laid down in this second enactment, is
to be extended to cases only which can amount to a
fraud with a design to defraud & deprive. But suppose
there was no design to defraud, & then notwithstanding there
are some cases where such a grant has been given
as subsequent creditors - but this is not enough
the law.

If I make a grant of land to his son, when
he was able to pay his debts & has a great deal
left, he would not be supposed to intend to cheat, but
such a grant as this is never good in legal point.

When then is it good as subsequent debts? It is never
good if at the time the grantor was generally indebted
there is room for the law to examine its jurisdiction. By
generally indebted is meant such an embarrassment
as to be pressed by debts, not that he owes a few pounds.
3 Atk. 511. 2 Do. 19. 664. 1 Do. 75. 1 Atk. 61.

Why is this so? Why should this grant not be good, &
yet a voluntary conveyance without intention to defraud
not rendered void? We shall see presently.

Such a grant to a stranger is never good as subsequent
alter.

When such conveyances (in which the grant is not in-
 tended) are made for the purpose of a fraud, they
 are good as subsequent alter, & consequently, if he make
 a conveyance to another person, except to one for whom
 he is bound to do so, his deed is void against subsequent
alter. See last note.

His promise for a security will not thereby be
 as subsequent alter - for the promise is to bind to find
 him for what he is due - & even this promise does
 not with an intention to become indebted afterwards
 is a promise as subsequent alter. L. Alth. 11.

This is the doctrine furnished by the case if there
 were a voluntary conveyance with an inten-
 tion to become his void against creditors. L. King 10.
L. Alth. 924.

How can you prove that the conveyance was made
 to cheat subsequent creditors?

When the settlor is married, disposing of him-
 self of all his property, & the creditors are so ignorant
 as not to set up a debt - these things must be left to
 the jury to weigh & determine as evidence.

The debt was all this must be done with an inten-
 tion to defraud - if not they are void at once as to
 respects prior debts & here there was no intention to
 defraud. But the watermen hold the party to pay
 the debt contracted by the grantor except as the same
 is specified.

How is this reconcilable with the words of the deed?

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By an original R of continuing this state by ¹²⁴ ~~purchase~~
in L, that induces the question did our ~~state~~ then was
an intention to deceive.

There is a presumption in L that need be rebutted - there
may be there was made with an intent to deceive & this
is rebuttable by contradictory evidence - How can
there be fraudulent afterwards? otherwise; why was man
deceived at first.

Voluntary conveyances vs Purchasers.

Then speak upon the stat 27 Edw. which is not universally
adopted here tho it is in some states.

Is a R that voluntary conveyances are good for nothing
vs subsequent purchasers.

The L to makes all these conveyances good vs subsequent
purchasers.

By this stat it makes no difference whether the pur-
chaser knew that the conveyance was made voluntarily
by another person - Why is this so? Did he design to
deceive or signify any thing? Why this is so we can't now
tell - But the moment he attempts to sell his wife, that
he intends to deceive.

This appearing to sell shows that he intended to cheat -
therefore when the purchaser buys he knows that the
seller intended to defraud - the appearing to sell justifies the
inst. 8 Co. 60. Another L & Co. Corp. 204.

Is not the deceiving that makes it void - Is the intent
to deceive. Whom did he intend to deceive? Not the purchaser.

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agreement made before man. he and, there must be a
firm agreement. 1. 1st 93. 2nd 446

But how would a verbal promise to settle lands be
considered? Clearly he could be compelled to settle because
the verbal promise was void by the stat - & yet if he
settles according to the verbal promise, he is as good as
if he had done it in pursuance of a written agree-
ment. 2. 1st 101. 2nd 526.

From this then it appears, that there need not be an
agreement on which a recovery could be had.

These man. settlements are good in some other ca-
ses - A settlement made after man. will be considered
void unless there is some consideration arising after
wards - as where a W. had a portion coming to her
afterwards & was not sufficiently provided for before
her settlement must not be extravagant. 1st 297. 2nd 10.
1st 101. 2nd 168. 2nd 597.

Next estate of the W. may be proposed - When there
an estate is given to trustees in trust for her (not to her
separate use) the H is the owner of it as much as he is the
owner of any of her legal choses, with this difference
only, that the trustees, having the legal title, if the will
not deliver it to him, the H. must go to court & if they
will permit the trustees to refuse to deliver it up, an
up the H. makes a settlement on the W. & so comes if the
H. was then to make a settlement on his W. in consequence
of the stipulation of the trustees, it would be good - because
what is done voluntarily by the H. is what they would
have compelled him to have done.

Yet even this may be fraudulent, for if it is extrava-
gant such as they would not have compelled it may be

fraudulent, the nature of the whole & the relation of
the parties are to govern 2. Attk. 67. 524. R. 10. 514.
1. Ho. 534

being a full and entire interest of the trustee can be given it up. 1. Attk. 12. 514. 515.

Some of the cases before it would prove the same
thing - viz. that what they would have done is
good if the H will consent to do it voluntarily.
1. Ho. 18. 2. Attk. 29. 518.

There is one set of cases standing on a different foot-
ing - where a settlement may be made on the H. &
is not fraudulent, & yet the H. is not a trustee relation. This is
that of a legacy man's heir. The estate refuses to deliver it
up to the H. unless he makes a settlement on his H.
the H. insists to see the estate at L. - but they refuse
an injunction to stay or suit until he make a settle-
ment - such a settlement as this is good. 3. P. W. 17.
2. Ho. 512. 2. Attk. 519.

With respect to trust estates, the R. is the same when
the H. makes a bankrupt - the assignees stand in
the place the H. would have done, & can't get the property
out of the hands of the trustees till they make a settle-
ment 1. Attk. 282. 251. 257.

There is a distinction to be observed when the H.
assigns an estate as he would do both legal & equi-
table the assignees stand on a different ground when
it is legal & when it is equitable - When it is legal the assign-
ees may collect it at L. without making a settlement
on the H. - but when it is an equitable claim he must
go to chancery, & they won't give it him unless he makes
the settlement - the equitable claimants pass with all the

equitable here when there is. 2. No. Jan. 15. 804. 1. P. W. 251. 286.
2. 11th. 418.

There is a question as to the nature of the duty. But there may be a fraudulent conveyance of goods from the mother to the father. But how can the wife get at it? The father can't remove - but he can. The father as it now stands is opposed to some old decision - but he is called on a great question in which the Chancellor says, the Prince shall prevail. 2. No. 574.

The remedy at law is gone, because he can't bring his execution - but they will go to the Chancellor's house - as to the old decision in which they say there was no remedy in equity, see, Prince's title to land.

As to the last case the Chancellor said some the broad proposition, that no voluntary conveyance to disqualify estates was good - & this led to a question whether all children who had received any thing would not be obliged to refund the conveyance being voluntary. The Chancellor in his answer says that he is not inclined to interfere with the magnitude of the gift requires it. Eq. Ca. 142.

But another question yet arises - this party requires is not articles - his money - & this you can't expect to find - in the nature of things you can't say, if you find it then he got a judgment at law he could not bring an action. Every one supposes that you must first get a judgment & then if you can - if not as to money - the fact is you need not first sue - you may go direct to the Chancellor - for if not the law will be satisfied. & the case before the Chancellor will warrant this conclusion.

To all these doctrines there is an exception - a man who was a weak humor very persuaded by his friends to convey away all his property to his own use. This appears to be a reasonable transaction - yet it would not be good in equity. But it has been determined in that such a conveyance would be good as the mortgagee's own choice knowing of the point - the point here consists in dealing with a weak man. Sturges v. B. & B.

There is a very common mode of conveyance in England - that is grants under firmum precium - a man redeems a woman & gives a bond as the price of her virtue - she can recover this on account of the lender's promise to persons imposed on by seducers - & if he makes a conveyance to her his good, & the illegality does not destroy it except in equity - but his good at all events is the grantor.

A conveyance to trustees to pay a minor's debt requires same notice. To this such a conveyance as that equity can come upon them & take them it? No - would be considered as fraudulent, & the equity would not take up with it. 2 th. Co. 241. 1. Rev. 512.

Conveyance to a stranger then is fraudulent in equity - & even a conveyance to a third person to pay debts would not be good in equity - his good as the law. th. Co. 242. 1. Rev. 510.

Suppose he should convey to a creditor whom he actually owes - this would be fraudulent or not, comparing the debt with the thing conveyed - I speak here of an actual conveyance & not a mortgage. If it exactly exceeds the debt would be fraudulent. But is it not so far good as to secure the creditor's debt? No, then would be a difficulty attending it - the creditor would not

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know upon what part of the land to lay. Suppose¹³¹
he can't get his money unless he accepts such conveyance
- why let him take a mortgage - A conveyance to a
stranger to pay debt is always good as subsequent for
charity as the heir. If the purchaser have no no-
tice of the prior conveyance, it must stand to the other
case. 1. Ch. Rep. 33.

Truist may exist in a conveyance to purchaser, when
a full consideration is paid for it because he is not bona.
fide. Crox. 432. 434.

As when a knowing his entries are coming upon
his lands sells them to B, for a full consideration &
immediately goes to procure out of the reach of
the d. - this conveyance is fraudulent - It is Harv. & Co's
opinion before.

A greatly litigated question. Suppose A fraudulently
conveys to B - & B conveys to C a bona fide purchaser - are
these lands liable to A's entries? J. R. thinks they are, &
that the bona fide purchaser gets no better title than
the fraudulent one did.

For 1st a court wholly need care by
any thing ex post facto be made void. This course
is a little too technical.

But 2nd this construction will defeat the rule whol-
ly. How can you prove that C was a bona fide pur-
chaser? Or is this in analogy to other cases, where
the bona fide purchaser is insured.

They mean then A conveys to B for the use of B, & D pur-
chases of B knowing nothing of the use - now say they the
purchaser is good - But you will observe the legal title was
in B, & there is no stat. declaring that a conveyance for the

use of another is not a cause of fraud - but the case under consideration is fraudulent & is so to be so by stat.

Is it also if A sells goods to B which do not belong to him, & B sells to a bona fide purchaser, the purchaser is good - but this is a principle of policy - But suppose A sells a note to B which is void - can the bona fide purchaser recover on the note? No.

The only argument that has a plausible appearance is this. They say B can do what A could have done - could A sell to C? yes - What then could B do? The law says he can. The law says so on the ground that A is entitled to have his note. But say they let the notes bear the money, as if they were in the hands of A - say B & recover for this is the only way to keep the argument - but there are objections to this - it throws known principles of law. There is no case except that in Baron & Ames, where a man is obliged by operation of law to change his debtors.

The rules on this point follow; they all relate to the bona fide purchaser - not notes. 133. St. 259. Shaw. 421. 2 N. 131.

the death of the fraudulent grantor here does the note help him? The fraudulent grantor has it against the notes - but now, can you keep the execution? The grant is good as the note - The note can't run on the principles of the English law & get it.

Donatio causa mortis is this fraudulent as it involves notes? yes - is in the nature of a loan, that must yield its notes - is subject to pay notes. 1. 11. 255. St. 772. 2 N. 131. III.

I suppose now a case of voluntary settlement that is good in every way - the father was not married when he made it - then came to second marriage - who was in life at the time. But there was covenant between him & I that never was broken, & actually existed - this covenant is broken after the settlement is made - now is this to be considered as a precedent or subsequent claim? If the former, the claim is good for nothing - if the latter it must stand. The real question is was the man so involved at the time as to destroy the settlement? He is settled that he is not - this is a subsequent claim - is not a disturbance in possession voluntarium in finibus - the father possesses the minor until not until the covenant.

If a man covenants to perform any collateral act while being no debt like there is a right to perform a settlement before covenant broken is good.

But suppose here a bond intended not to perform some collateral act, the bond existing at the time of the family settlement - but four years afterwards the condition is not performed - will this destroy the settlement? the case say it will. But they are destitute of principle - a bond to do a collateral act is no more than a covenant to do it. You may be sure separate them in every instance - but you can never see no more in a bond than an agreement. 1. Heble. 442. Dr. Ch. 877.

The stat of the 13. Eliz. has exempted all the monies then was in man to get rid of it - & in one way they have prevented this stat as before said - as follows in viz. If A. knows it must do to purchase a sum of T. N. to give his son A or to give him any of his money - being much in debt - so he goes to T. N. buys a paper

of him & tells him to convey directly to his son &c. &c.
 Is this within the stat? It says all conveyances from J. & shall be void. This point has been brought up, & the court say it is not within the stat. by Bar. 550. 2. W. 59
thus till found. 2. Atk. 551. 581. 1. W. 76.

This difficulty however can be relieved in equity, who will compel the son to convey to enter under another method has been invented, that did not do so much - a man would go & give voluntary bonds to his son or any body else to whom he wanted to convey. & he don't pay the bond & is sued by the volunteer who execution is issued on the bond - this is fraudulent & void in equity. Pr. Ch. 12. 1. Atk. 239.

There have been questions of this kind - Whether a man may not be guilty of fraud by giving preference? then the L. of bankruptcy operate - Suppose A owes B £100 & C & D also - he has but £100 - now on the principle of the C. L. he may pay either. But let's know B is going to sue him & give & pays all he is worth to B a just debt - this a conveyance to pay a debt & is it fraudulent? The current opinion seems to be that there will enough - but latterly it has come again into view & is again settled, that is good - for tis clearly a bona fide conveyance to a bona fide creditor. S. 1. 2. 238. 420.

I will now make a few observations on a case in 2. W. 51. which is a leading case & is in substance this.

A. owed B. £300. & C. £200 - C. sues A - a witness the suit was pending, who had but £300, makes a conveyance of it, in satisfaction of his debt - this was all the property he had - A continued in hope & used the money - & went on with his suit recovered judgment & then

upon these goods - B drove off the sheriff claiming the goods as his property, for which he was indebted - How did B own the goods? There was no doubt but as to the consideration was sufficient. What was the difficulty? Why he left it in possession of the goods - But does this make it fraudulent? It was so by the act that this was done next, the suit pending - But these things are of no importance after all - no one can know that there was a trust - B might have done it through attorney for A - but this leaving in possession is putting out a bait - this conveyance then is void as to both parties, & subsequent - The estate may have delayed collecting their debts on the strength of this man's possession.

A 6. Law of the Stat. of frauds & exigencies.

This stat. consists of four branches, viz.,

I. It says no cont. by an oral contract, to pay money or to give any property, is good unless in writing.

II. No man shall be bound on his promise, to answer for the promise, default or misfeasance of any other man.

III. No promise in consideration of money is binding unless induced to writing.

IV. No cont. respecting lands, tenements or hereditaments, or any thing growing out of them is good unless reduced to writing.

V. No formal agreement whatever unless to be performed within one year is good - the writt. form of them in three orders -

I. No oral contract.

There is very little to be found on this subject - I believe the stat. has made very little alteration in this branch.

If before the stat. he had made such an agreement & there was nothing more in the case, would not have laid the foundation for an action.

II. A promise to pay the debt of another. These books are full of cases out of the stat. - many formal agreements of this kind are binding - One thing is certain - whenever A owes B money, & B applies to C & promises he will pay A's debt, & there is nothing more in the case, the promise is not binding.

But if B by his promise causes the original obligation to be cancelled, he becomes liable. When the only remedy is, the promise of him who owes in aid of the promise the promisee in law, the foundation for an action the same.

But if the two securities remain, the parol promise is not obviously binding - this is the true criterion.

You must remark the new consideration don't take it out of the debt - tis cancelling the old one - & the debt must have been contracted before the promise.

The original debt may in some instances remain in existence, & yet the verbal promise be binding. This applies to cases where B has in reality paid & got a security, & is promising to pay the debt in case B to release the security.

There is one case that is seemingly opposed to the principle - but on examination it falls within the R.

A.

brings an action at a part & settles as B. & says withdraw your suit as B. & I will pay you £50. He withdraws it, & afterwards sues B on the verbal promise - he fails because it was for the debt of another. In this case the original claim would seem not to be satisfied. But in Eng. a payment is a bar to an action for the same claim, & the case is within the R. This is not true in any part of the U. S.

III A promise in consideration of money &c. This means money or settlement, not promise to marry - all money settlements must be in writing.

IV. As to respecting money &c. In some cases a man can convey an interest in land by parol within the terms of the stat - yet there are others out of it. A man can't make a lease by parol even for a year. I don't mean that a man can't have a legal lease in a lease for years - he is tenant at will to be sure - if he don't go & improve he can't pay for it.

The principle on this subject is this - If a man makes a formal contract, he is not bound, & should not be made it into execution, then doing nothing more in the case his not binding. But if he makes one of this as a trick to get any thing out of a man, he means to perform it.

Further, numerous cases are sold at publick windows - the sales are not within the spirit of the act which was made to prevent fraud & perjury & unjust suits.

There is another set of cases out of the state - wherein the court has been coming into execution - it is in such a point on one side & accepting by the other. If he refuses to execute his part, he will be compelled to do it.

As if A agree to convey Blackacre to B.

B will convey Whiteacre to him - & so on. & so on - then the court will sit with the consequence of & they will go further - for if A accepts, he shall execute the court on his part.

There is one of principle wherein thro all these cases which is this.

They dont require the court should be in ministering at it, for you can get at the end any way from my hand, as it the hands of the court.

A files a bill in chancery vs B, & in it he charges him with making a contract to convey his house on such a day - & comes into court & says that it is he who made such a promise, but let stand, having nothing the state of fraud & perjury - Now this he can not do - for he will be bound to it - for in conscience he was

Could proceed to any other set of facts than the case from which our inference can be drawn that such a case was made will make it binding. This is the rule of that court.

Vetted contracts to be performed within a year. This must appear so from the terms of the Act generally. But if it depend on duty which may or may not happen within the year, this is of the date. The only question that arises is, whether according to the common course of things, the duty would or would not happen within the year. By the latter, I mean the date.

I. The first branch of this Act relates to extra Judges - I don't see, that on this subject, it has made any great alteration.

My main fear is this - I will go back to the 11th. Suppose our only or only duty is to pay a debt - what effect could it have to be great as there it had before - they are liable, if they run off the 11th. But it says he shall not be bound unless he is in writing - this seems to imply that he is bound if he is not in writing. I don't however in this case whether he would be bound - no consideration.

But suppose it had this effect - it had the same in form. If there is a case in which the law on this subject is altered I don't know it.

The object of this Act is to let people know, that those agreements which were before the Act were good, which are not now by the Act. more than some have the same of the Act.

He may now shall be obliged to pay when he comes to pay the debt of another, but he is in writing - Would it have been in form? The condition is, there is a man that wants to trade with A & B but does not know him. B says to him - It will be as good as if he were to be sure was as good by hand as he is in writing - But this did not bind him as contract, as that there are many cases in which one is not bound by it.

The case is given to us in 1. Polk 23. but the principle is this - where the original claim remains in full force, & a promise is made to pay the claim, it must be in writing - or in other words, if the last promise comes only in aid of the first, it is not binding unless induced to writing - Otherwise it is binding, when the whole debt is gone to the last undertaking, & the first is completely destroyed - for the last undertaking is an original & not a collateral one.

In this case the debt remained to the - It is also to me A - says they promise vs B & I will pay the debt - this is clearly within the stat for the original claim was not a lost - to have made the promise it to be a new promise in writing - then it would have been good for them - no consideration enough 1. Polk 222.

This was a case of a man who had a debt - & he was not within the stat for the original claim - & was good by reason of the release which he gave - is a case to another action for the same case 1. Polk 300.

Whether if a man has in writing a debt upon a debt,

to pay his debt as if he had nothing done by it. If he
 pays that money in money of the French promise of
 another to pay his debt, this promise is not of the debt.
 Hence, that the original promise stands.

The law states that the debtor holds one of the reasons
 in this case is that the law does not bind by the debt itself.

as this - By the custom of London when one man
 makes a contract of another man's house, or when he
 makes a contract to engage to pay next, the debtor has
 a lien upon the body in the money to pay this next -
 this is a good title as a collateral title.

This promise must altogether to pay the debt of another
 as if it is a joint debt as then in fact
 if they agree as joint debtors to him when they
 had no debt - I am about to see them & it is not
 to pay the damages - this promise is not of the debt
 but of the debt.

If there is a moral obligation to pay the promise is not
 one the act in writing - as when a promise is made
 to give a pound not by the debt but by the promise
 as to pay. See 1st 186.

Answer to B. says if you wish let B. have such good
 with you - this promise is not of the debt - but if
 he had not it - but say you for these goods I will -
 this is within the debt - & must be a matter of law. 187.
 2. 187. 188. 189. 190. 191.

A promise in a letter is a good promise to pay on ac-
 count. 1. 187. 191.

III. Promise in consideration of money - I believe an

on the part of the first court as far as a promise to pay
me - that is not so now - the language of the debt refers to
many settlements - A promise between the parties is not
the basis of consideration - is now taken out of the debt
by being partly executed - because it would allow the debt
to make it immaterial - as increase of a promise by a letter
of you will marry my daughter & make settlements with
her - he marries her - this case is very good as
to executed on one part - & is not a promise between the
parties

There is a case as well to be out of the debt - the words
of the debt are any debt or promise made between the
parties, or any interest in & about them - the
question comes up whether to sell timber growing out
of the land included in the debt - the debt is not paid
- because timber not sold or sold for the debt - for the
moment it was not sold it became a part of the
debt May 1797.

IV. Court respecting the promise to pay - the
promise is not - if then could be set on one side or the
other - can be no danger of fraud in person thing, can
not within the debt - there is no danger of fraud in per-
son or the terms of the contract.

There is another case of the debt in which he is there
to out above £10 must be in writing - but now the
value of a note at common law is £10 by purchase -
Manufactures are not in General within the debt
5th. 2. 529

When a bill is filed in favor of the party coming in to it & an
order is made there must be an affidavit to be sworn to
in 2. v. 14. 1. 110. 822. 529.

The material of case taken out of the old manuscript
is more it will present good & enable a person to see
really how to take them out. When the case mentioned
in the last volume is finished a new & extensive
copy of *Harper's* is done. A. 16. 136. S. 1. 1. 1. 1.

When this book has been prepared the case will
be out & have been corrected in the first

has however been a small dispute found with
so many facts in fact - it is a small dispute
it is here it is a small dispute that is a small dispute
either in a small dispute. A. 16. 136. S. 1. 1. 1.

In answer to a question whether the old of first ought
to be in answer - this case says for not answering the
proof and the old - the old book is not the
proof and the old is a small dispute - but the original
case - here the old of first is a small dispute
in answer. A. 16. 136. S. 1. 1. 1.

But for the case in the first volume it is a small dispute
to have a small dispute of the case.

When the case is actually in the case, this is to be
a small dispute.

The case is now in the case to answer the case
- it is a small dispute, in fact to answer the case
- it is a small dispute, in fact to answer the case
- so it is a small dispute that there should be a small
dispute of the case. A. 16. 136. S. 1. 1. 1.

There is a case of a small dispute, in fact to answer the case
- it is a small dispute, in fact to answer the case
- it is a small dispute, in fact to answer the case
- it is a small dispute, in fact to answer the case

to make a gift to the young man, stating that he was
going to see his mother in such a way - after she was
informed he refused to give her any thing - but about
the latter being unwilling by her agent was the father
of a promise, & it is impossible here to state for it.
2. Brown v. B.

At marriage loan or balance the father, is bound
as a condition. 1. H. 618.

A Haggard with his H to settle with a son - it was
to be a deed to marriage - but something prevented it
being done properly before the second birth after
which he would not comply with it - & the question
was raised whether this was not just ground to
void that does not. 3. 24. 61.

It however the promise is from another person to a
third person - as when a man has promised to give
you so much with his daughter - the wife is bound &
he is bound to carry his promise into execution. It is
compulsory here to do it. we have a promise upon the
one in it. He has retained an advantage by his promise
& we are bound that he should have it. 12. 61.
1. 24. 61.

One must enter into a formal promise as to the terms
of the suit - but one may enter into formal proof to show
that from the business of the court.

In this case the question was whether the instrument
was a mortgage or not where there was an absolute
promise. By some law requiring entry he had as to the
other two could be done if the law was for a condition
not of an absolute mortgage. 12. 61.

There could never be an contract - said by the parties who are to be bound by them.

There is, some question as to the law, but it is not at all that if the court were to find it to be in violation of the law, it would be out of the state. But there is a difficulty, what is to be put into writing? a certain bargain - but this is to be proved by proof - of course the end of the law is to be proved by a statement to be put into writing - and a sufficient of that to be put into writing. Ch. 4. Sec. 157, 109

A common law is written in the law, but the law is not written in the law. The law is written in the law. Ch. 4. Sec. 102.

What then constitutes a writing? There must not be any writing at all. If the writing is put into the law, it is not a writing. The law is written in the law. Ch. 4. Sec. 102.

There then can be no writing at all. The law is written in the law. Ch. 4. Sec. 102.

Contracts contained in Letters

There is a difficulty attending these. There must be an agreement between both parties to make the contract binding. You suppose a contract to be made if you write to my dear daughter to give me so much.

Contract

says nothing, but the man. takes place. His issue by ¹⁴⁷
his promise, for when B has seen the thing, he knows
into the promise has been committed. 1. S. 2. 1. 10. 321
2. S. 11. 68. 9. 1103. 3.

When a subsequent promise was sufficient to set up
a previous letter, which has been rescinded from - The
promise is the letter was rescinded at first, but is
rescinded from, before there is any action on it - after
wards there is a final promise to do what is promised
in the letter - How can there be a final promise if the letter
did he not act upon the letter after all? The last promise
is sufficient to rescind the first promise which he
rescinded - thus leaves the letter as it was, at first.
1. S. 11. 361.

V. Bonds to be performed within one year. That is the
term of the bond as such, as well as the performance of it
in one year, & the only way that extends to the
ordinary course of things, and happens in the case
of a year Bur. 1288 1. S. 1. 286.

As much as the effect of James & Benjamin. There
is a principle laid down that to a court, entitled nothing
paper to the purchaser unless the bond had a actual or
potential interest in it. Bond. 141.

Suppose it makes a grant to A by which he comes
to have all the world, he should purchase for the year
to come. Is this good? This is no - nothing paper for
he had nothing in it at the time of the grant.
Holt. 131 & S. 11. 131.

If a man grants a thing that he has not yet fully
acquired, he must intend that at the time of contract
it is not yet his - he is enticed by his own mind
- for he has promised that it is his. However no in-
terest passes as to the thing itself - thus I think the
title of principle, a potential interest will do this is
enough in the mind - He grants all the
good that shall pass on a certain piece of land -
this is - potential interest. Hobb. 132

The consideration of a bond.

It is of the nature of the consideration is interest
- tho it must be of some value in a pecuniary
point of view - yet to the promisee it need not be if it is
a loss to the promisor.

This I suppose is not hard enough to comprehend if
you will - for there may be a consideration when
there is no benefit to the one or loss to the other. It may
be that something should be done or avoided, but not
that it should be a loss to him. A promisee & he must
surrender to if he will give him £100. It may be that
not even an interest in the same. Now if it does money
to him is entitled to the £100. This may be a loss to it
may be a gain.

The origin of the promise is this. Firstly if there
was not an agreement on one side there was nothing
on the other. On the promisee side there must be a
thing which is a definite sum as a consideration
his obligation. There must be a consideration to
make it a contract. There is no consideration to a mere
promise.

This it is not applicable to all cases out of all
 genus. As a house he can never be taken from him
 is no consideration - never had he money given to
 give him.

All other agreements are not binding in court if
 a consideration - to have a gift - but for the
 purpose, otherwise not.

With respect to real property there is a question as to con-
 sideration - the R as laid down is, that real property
 always pass when there is a deed or suitable con-
 sideration, but if there is neither, then it is the
 of the grantor himself.

Nothing further is necessary to be observed on matters of

to the contrary then don't rest upon parole but on deeds
 written. For the matter may appear to be a matter
 a consideration as parole is well as written, but let
 the differ in some respects - for no person could be
 a matter to show there is no consideration, where there is
 one referred in a written contract - you may however
 show it by a writing attesting the fact, or the court it-
 self may show it.

Suppose then there is no consideration excepting the word
 "value received". Can the consideration be inquired into?
 By the parties it may. But don't this contradict the
 rule itself - also you can't contradict the opinion of the
 court. & for the usual practice of note of hand
 if there is no consideration, to show in fact that
 there is none.

If a written contract expresses no consideration is it
 same irregularity? or then even the presumption is to

It - the law may intend to show that there
was consideration.

I promise to pay £100 to you and a consideration
from it he shall pay, and may as well as to
show what stands with the law, but not to be
let it.

If the instrument is made then it is no agreement
of consideration - for by a principle of law, it is
consideration - This is a principle of law, it is
not to be let it - the law however does not show the
law of consideration.

If a man a hand to b, you can move the law, you
indicate it is not stated in law - But in case of a
man go into an injury, it may be that some
man may not be recovered.

You must recover the whole sum in a hand from
the principles of the law - In an action of debt
you must recover the whole sum or nothing - but in a
case the law you must recover something - here you
must recover the whole.

But in an action of debt you go into the question
of money, because this is the law.

Again, say with a man make such a contract as this
there is no consideration, only the making - then will have
the parties to them ready at L.

With respect to part considerations - tis so that in
part con siderations there can be no recovery. Suppose
some one a man who is attached & gives you
and he then goes to L. & tells him what he has

Don't drag it with me - in this case, I think
it is 18.

When one does a thing for another at his request, he acts at his consideration. the distinction is to be observed. If the part consideration is actually beneficial to the man who promises, he is bound by it; if not he will not be bound. As if I requested another to do a thing, & he promises to do it - this consideration the part being beneficial will bind him.

By a part consideration is meant a promise to do a thing for another that has been rendered.

As the law stands I think this definition is inaccurate - for such would be good concerning to the law of consideration. So much however is true - if you have done another a favor without view of reward the promise is of no more value than the law.

This may however part under another law. When a person promises that he is under no legal obligation to fulfill the promise but is under a moral obligation to do it, this promise is binding. This is a sound rule & will apply to many cases. B. & C. 157.

One who owes a debt bound by the law of limitation is bound by a subsequent promise to pay it; he is not in conscience discharged from the debt by the law. B. & C. 158.

One who owes a debt may be bound by the law of limitation is bound by the law of limitation. B. & C. 158.

things are often confounded - but they are two distinct things - in some cases one is a promise in itself, the other

Whereas there is an agreement in which something is to be performed by the party, in consideration of which the other is to pay, & the other is not so interested as that he may know the thing is done, unless ought to be made. There is no duty incumbent on him the thing is performed, & he is not liable to sue upon the other's failure to do so, thus to be the case - this may be known from the case of *Holt v. Holt*.

The other is not liable if the other did not know - but where and not being in a position to know, it is to be a kind of word as this condition, that he should not be liable as much as to give him - This is not a contract without notice & is shown - the reason is that it was essential to B, & might have been a condition that he give the slave along with him, & it is to be a more substantial thing, & is not a contract without it - It is known better than B. *Case* §. 492.

Upon this principle of one man's being liable to another without notice is not in cases, with all the b. & c. cases of this kind.

But there are cases where there must not only notice but a special demand - also one thing is clear, every time a note is made payable on demand, it has no demand is necessary, & if it be a special demand, it must be so in the declaration, the other is required & demanded is not enough - to put in every suit.

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It is not a special demand that it is to be made
as a rule as far as it goes - but it does not
all the same.

If there is a promise and there
is no need of a demand. This is true if he is to do a
collateral thing on demand. Bro. J. 188, 588, 1. Sec. 8.
H. 11. 11. 11. 11.

If from the nature of the contract the promisee
discharge himself by a tender no notice is neces-
sary - if he cannot do this a demand is necessary.
This may be exemplified by an

A promisee to
pay B a sum of money on demand and no de-
mand is necessary for the discharge of himself
by a tender.

But if a promisee says to B I will give
you a note to pay to B in money on demand and
he has no money. I must pay you in this manner.
Agrees to it & takes the note - this note is dis-
charged by a tender - therefore a demand must be
made, & no duty remains till this demand is made.
The note.

The nature of the contract must always point out
to you where you can make a tender & when not
if the man can make his election, then must
be a demand.

We look at a case all in the same

When a demand is in a corporation you must apply
to its managers, because he is not supposed to know
all the rights of the corporation.

The case of the corporation is not an exception.

Offering from the A. for of the business to say if
 did the business in any way by letter.

In a letter to the A. for of the business to say if
 must be stated. If he not so much it was the
 A. for. - a letter in which must be contained. for there
 is no right to receive without the demand. There is
 nothing in the letter that the party will always find
 the demand. when there is a demand for the fact they
 find nothing but what is alleged. - There may find the
 demand if an agreement is stated. without the fact. and
 on specific demand. but if he not stated at all by the
 fact it. Long. 684.

For a long time considered that a bond given to a man
 by the H. to receive and was not given. -
 it being a claim in action. - by a later case he decided
 not to be void. under the old law the H. had to go to
 chery to get a specific performance of the agreement.
 4. It had been an agreement no doubt. but it was void.
 had 2. 11. 4. 2. 11. 4. 2. 11. 4. 2. 11. 4.

If an owner to chery it is said for the fact of his
 agreement. - a great case. but now the question is
 whether it be considered as an agreement?
 It should be 4. 11. 4. 11. 4.

Upon the same ground an agreement of a claim in
 action. within a demand in chery. A holds a bond as
 B. & sells it to C. - now B. could sue in his own name
 but in that of C.

Suppose B. lends the money to C. & sells it to D. -
 it or D. sells the bond to E. - now if D. or E. or
 have lost the money - what then? - the money
 now means the money or discharge it. & therefore

you shall pay the money over to B. & if A is a bankrupt
 Sept. 1813 if he had notice of the assignment at that time
 it was on the 1st of Jan. 1814. L. R. 101. 120. 108.
 L. R. 101. 120. 108. Bay. 688. & L. R. 455 650.

The tortious founded on torts

I shall first treat of them at L. & then of them at equity.
 I shall consider all those various actions which run
 out of torts at L. & the several defenses that may be set
 to them respectively.

Assumpsit which lays the foundation for an action on an
 of two kinds 1st such as an assumpsit & 2^d such as
 an assumpsit.

An assumpsit is one where the terms are a
 quid to throughout & is not material that it is
 written. The L. is the same if it is not.

The form of the action is the same as a writ of assumpsit
 in, as on a writ of assumpsit of the assumpsit you
 need not state that he is a - even if it is in assumpsit that
 it should be in writ of assumpsit - it is not material
 whether it is in writ of assumpsit or a writ of assumpsit
 writ.

Under the head of assumpsit I shall consider assumpsit
 written, both by writ & by assumpsit.

In assumpsit writ of assumpsit is the simplest case
 often arising when there has been an express & you
 may find your action on either.

When the terms of the contract have not been assumed into execution throughout, & the subject matter is one in that a contract may be made out of it, this is not an objection but an objection. Thus if a man should promise to give to another a certain sum of money, but he should pay it to the wrong person. This is not founded on the case on a point of law - but on the fact that a man is bound to do his duty as in case a man leaves his wife and child of course there is an implied duty to support her & the child, or his only.

I shall now proceed to show you the action and its elements, now, as before, I suppose after a point of law has been brought, & when other actions are suggested.

Whenever there is an express contract to pay a sum, when you say every thing, the action belongs always, unless it is for it, it is a debt, & this only is the possession of the contract - then there can be no implied contract.

If you are on the right side, the end is it is the express contract. It is not to say with someone in the same matter - you may have been wrong - the right of the express contract is not a matter of it, but you may have been wrong in that you have not been a holder of it, that you did not sell to it, & you will receive as much as he is worth. The no more there you may see your debt. As there are also you may have a debt - for there is a possibility of it.

If the promise was to do a certain act, there is no debt - the remedy is an action - of course an action of assumpsit. If you first see it will in them

must be an offer or some other fact.

In the case of a voluntary action there was a present promise at the time of the voluntary action, & the money & property given under the promise as for payment.

We see then in a promise, acts where the action is in time an intention accomplished after the fact and is when there is a promise to do a certain thing there was an action after the fact - when there was a promise of a promise, the action was brought in action.

I will now consider when an action can be brought in the same case.

An implied contract is an action in contract, with debt on a quantum contract - because it contains no good intention made after the fact, & an express contract will not lie - because the express terms of the contract are not agreed upon.

Sometimes this action is concerned with trust of or loan. As when A goes into B's house & takes his horse, not that he is to sell him. Then B says see it in his hands as horse, or having an action for the money he has given for the horse. It is his right to take the horse - & in this case you are to recover the horse.

So if money is taken from you by another that amounts to nothing - here trespass in & against his property is an action for money had & received.

There are cases where implied contracts only exist - but they are few however - when the intention

happens to find them can be no other - as when it happens there mistake not found

Thus A sells him to B without comments referring it to be his true - means the money - If he happens not to own it, and sells it against his - so too for money paid by mistake, you must bring an action of assumpsit.

The extent of this action may be seen from this view. This is an action of assumpsit with us where a man has the money of another who he is ought not to give on account to return.

This is not broad enough - it may be said since we know that when money is in the hands of A which he ought not in good conscience to retain, an action at law is not sufficient with us if there is no promise of policy that returns him - so the defect may require action to pay conscience he ought, - although some findable in policy steps in to prevent it.

This action is maintainable where the money is obtained in a new contract. See. 1012.

This action is as extensive as a bill in equity can possibly be - so you may bring an action of assumpsit for money obtained by extortion. It being standing on the other side that money be introduced to what an equity may be introduced in this action. See. 1010.

It is more a little of that action is more extensive money for me if a by deed the action must be. See. 1011.

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So also when the coincidence happens to give two
minerals, then when no. 6 & 7 & 82.

To also submit them as a favour to him from me
man to another, & before he has obtained the same the
the ^{most} ~~best~~ execution are taken up after first see the
History Review. 1867.

To a B that when wrong has been found & corrected
only you may receive it back by his action. 18th
Feb. 27. La. Aug. 74.

This article would be far interesting, & important, as to how
any one who is at all, is about in any way, or at all of
they would write the out. Dec. 1881.

When moving has been completed (50 pages) and I
found out to a large fine museum - this is upon the
same principle as all other series of moving - (Har-
is a circulating museum - about the same as to find
it around - this differs from all other series
of it that you have - it will turn to a new fine
series of, you may move them out of, by the way.
A. N. C. 130.

It has been determined however that if the necessary
fund have first an an ideal cost, you might receive
it back. (page 11).

This action has where money has been paid on a
judgt^l which has been removed. No other action has
attempts been formerly been made to remove on
the ground of removal - that the effect having no
with took the money - & that trust for a new one
which employed the officer B. A. R. B. (Comp. 419.

Now in the case of the 1st. I am sure the one that has
 given great trouble to many - it contains much
 to be thought of - it is to be seen in its
 place - Now indeed was given the right to
 I. & it was to be then at the same time - to
 look a moment of I that he would not come back
 after him - now I see the note one by one to
 answer the 1st.

The true principle of judgment with reference to a
 person.

Whereas the right of one to interfere with the
 right of another in this collateral way, you must see
 it - the right must be attacked by one side
 But when a recovery is had, not on the ground of
 interfering the former right but for recovering
 money unjustly detained - Does not the right
 of one to make any difference. H. R. 1812.

When an action is brought on the subject of a
 the non fulfillment of that right - when are the in
 that process, is on the ground of no right at all - it
 cannot be out entirely.

This brings well being up the doctrine of a
 before advanced - but something more must be said
 the whole account.

Now the 2nd is the that when a
 person agrees to work a lot of society, & both are
 equally parties & one is to be seen in its
 action, he must consider it back again - there are
 cases when the one is not equally interested - then
 it may be returned back again by the party to
 answer it.

But if the court is ill & it is not one party is made

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inured, & so that is not a contract & upon the
money he may recover it back again - The question
is, however, whether parties in fact made it. See 1077.
H. 100. 1007 710.

There cases you can determine as they are - whether
the law is made to protect such a contract
- the both are protected - & so what they
mean some. Doyle, B. 1007, as South.

This is the action permitted to a creditor to recover
damages for the breach of a contract of cooperation
- every man promises to pay the sum of £1000
the 10. 1. 1007. South 11. 1. 1007. 129.

Terms of office are measured in this action - this is
obvious because he is a creditor on a contract
the same may be - A & B. agree to submit a continuous
to the 10. 1. 1007. they agree that A & B. £20. per
but in fact they will be to recover.

This is one & this is all - where you have a remedy
of a contract nature, & this remedy, as any other, is
not a contract nature, is reduced to a remedy
of a higher nature, you are to resort to your remedy
of a higher nature. This is not a contract nature of B
but a high debt - you must bring debt.

I enter into a bond that he will forfeit £100 if
he don't build a house, & again in writing that he
will build the house - Now in case of failure you
may recover on this bond, or on the agreement, for
not building the house.

Then there is a prior agreement of a higher nature
you can't recover upon a subsequent debt of a lower nature.

There is a case where the defendant offers to perform - but his contract is to the principal. Vol. 1. Mr.

This is the action brought for all want of labor - men in their profession as lawyers, Physicians, watchmen &c - &c for all work and so likewise for money received.

As a general rule whenever money is paid over to an agent, which might not & then without notice to his principal has been paid over by him as a bona fide agent, you cannot recover of the agent. There are exceptions to this rule when he has been to account. Bur 1424.

Assumpsit upon Sales

There is a case where the plaintiff & defendant agree - as when the vendor has no title, & the consideration is a sum of money paid, the vendor may bring this action, as if there was an express warranty by a deed or the warranty.

But there is a set of cases of a different complexion - the vendor has agreed to sell the land to the plaintiff - there is a contract, but the plaintiff has made a deposit - after this he finds the title was defective & would have been into a bad bargain - Now the vendor under these circumstances has a right to sue the vendor upon the implied warranty - but he has got to make good the loss of the title. Bur 2689.

If there was an express warranty he might say that - but he may go farther - he may take the point - He is not obliged to go on, with the express warranty - he may leave his action for money. But I understand, but he measures as a lawyer - he measures only the defect.

But if the pots was transported, for a sale & if there is a fraud, you must sue him for it. He could mind the court - to say that in the 1st case but you may bring aft for the defect. 1. H. 4. 1092.

Case at Auction

When a man gives the points to his goods, the points owner of that the things were for of in conclusion - But the auctioneer of them was a small man, he was on them - they were off - & the bid is refused to take them on the ground of a small man. The auctioneer offered to prove that he told the bidder that there was a small man, however - & the cl rejected the bid. You good ground - had a deposit bid made, two or three were recovered in an action of assumpsit. 1. H. 4. 111.

The court here was in fine - & this distinction you must remember - return paper is not delivered so that the party must, with the court was a good one - if there is an incumbrance & not at once at the time you are not bound to pay for the cost - but when the party has changed & under the buyer, the owner must stand to his bargain,

and means his coming on the ground - or if he
 found upon the estate or in the premises -
 then the cost may be substantial. Then the parties
 must be bound by it as they themselves make
 L. I. 187. 183.

It is to be a pair of horses & harnesses to
 be sold for a sum of money. They were given. This was
 evidently not according to the contract - still however
 as the party had made it must stand. No recovery
 had on the warranty.

It is unnecessary in these cases to submit you to
 your money; that you should submit your horse
 or ~~money~~, unless there is a condition that they
 should first be returned. L. H. 11. 11.

It is unnecessary to wait the party that actual money
 not delivery of a thing to make - if there is no
 impediment in the way of your taking it, the
 contract is a delivery.

There is a difference between an actual & a legal
 delivery - for if the former owner confides in the legal
 delivery (which he does) then it is not a delivery to the
 party unless it is for a man or the bargain
 is completed. you may not have in hand - or if
 you have had money, you may receive it as
 a payment.

In some cases the vendor is obliged to deliver the
 article - when he agrees to deliver a cow he has
 sold - he must deliver it if he does, the the vendor
 has legal possession before the party is lost, he must re-
 pay, & wait the vendor. bond 296.

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The 1st mode of choosing a court. If a man sells an article, & the payment is to be made at a certain day, & the other party agrees to it then the party must

But suppose a case when the party is to be paid for it has a hour to sell & says his price is £100 - & says I will give it - Now if nothing more is done, he is the holder of either party to settle the court - for if I think the £100 the better price - & if I think the better the bargain is completed - & he is to be paid for it - because the case is the same.

If a vendor after purchase makes a default & the court is to be made, the default is considered as a default on money to be interpreted. L. R. 11 745.

Further Observations respecting Auctions.

A covenant to sell at auction is a contract with an understanding that the highest bidder shall have the property - & it is illegal to have any other terms to be made at a certain price.

This point has been settled - the auctioneer was told by his employer not to strike off any at a certain price - but the auctioneer sold to the highest bidder & was sued by his employer & the court determined that no action could be brought. 1862

Another question has been raised whether an auctioneer may sue in his own name & be determined that he may - he has a lien upon the goods. L. R. 11 81.

Where in Yarnell as in the Case of Things
 to what extent money was required in this case
 I don't know. The action for a wrong lies upon the top
 of money or not suffering of some sort. In a Case of
Winn, he agreed that the £100 of Justice Winn is to
 be used as money to first Winn Case 711. 34.
 2. 1. 1. 67. Nov. 1803.

The action in this out must be an action of
 there is no indebitur.

At Winn holding we can take is not the subject of
 this action - you must see them as a money but
 I don't think there is to be left to a person, whether the
 taking was Winn or not 1. 1. 1. 74.

An action was brought at a first court. The Winn
 took to prove that this out was redeem to
 long, & afterwards to show that the Winn was
Winn & different issues agreed upon but the
 court did not allow it.

If a case of any kind is Winn, whether it is a Winn or
Winn or Winn, the suit must be brought as all the
Winn Winn. By this is meant Winn if you
 don't do it they will take your suit.

They can't take an advantage of it however and by
 this is a statement - you may see as if there is
 there is for a Winn obligation. It has however been
 made a question whether Winn be Winn if you do
Winn all when you see one out to all the Winn
 is good. 11. 319. Winn 311.

I give you to 2 of £100 & B Winn
 the Winn is 11 & Winn for Winn

no man on the land.

But Lord if there is a new consideration you may
 sue on the promise - this requires some explana-
 tion. This is the case to support it. I hold, a
 note on A. & Co. when here & says A. you owe me
 £10 on bond. I must doubt know that you have
 a bond on me there it is. & I will pay you on
 what is the consideration - why say, they the bond
 is in it at in showing it. *See 1. 349. and 1. 348. 1. 349. 1. 348.*
1. 349. 1. 348. 1. 349. 1. 348.

A man voluntarily enters some public house to see
 to an action. The master then gives the person
 who did this had a small grounded prospect of a
 reward; but not of any fixed certain amount.
Holt. 106.

There often this is the case - persons live in families &
 under service, for which they expect some recompense
 when they are set off in the world, or are married
 - there is no cost. & so this is a voluntary action
 they have however always related to a reward
1. 128. Holt. 105.

If the thing in its action seemed to be a contract
 if the person was led into it by the offer of the
 other party, twill be left to the jury - as if there a
 request twill not be a contract if the person found no
 led into it then. *1. 151.*

Some other contracts
 When the consideration is what then can be so on

ch when I bring B to a transaction, & show a
 promise from the A of day I request the law
 keeper to keep him & give a bond of indemnity. If
 the agreement is forged the law keeper is to be
 ss. 6th. 18th.

If one promises to pay if it will do what he
 ought to do without the promise is void & no re-
 cession can be had upon it. & if any thing takes his
 intention. Burr. 214

A owes to borrow money to buy goods - B lends
 them money - A not to give on demand & he has
 half the profits of the goods as soon as A gets his
 note he runs B & increases his money & then goes to
 have one half of the profit. B - says this is wrong!
 B - it could not be for no interest was made.
 Crisp. 116. 792.

Unsolon considerations lay no foundation for an
 action. What they are may be difficult to ascertain
 the best case is this - when a man promises to pay
 a sum of money to make a loan at will of a
 person. He did so. Then there could be no money for
 the consideration was finished. He would then be
 bound to the lender at will at any interest & so on.
 18th. 22.

Chs when there are specifications.

In this case rather to really & specially, as when
 I appoints B his agent, & take a covenant from him
 under hand & seal that he should receive for all
 money - & he runs him in apt as fast as he receives

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the morning, the 1st of December that the volume
of the 10, 11.

This was a meeting on a small island where
- where with a covenant has been made & they
have a family over together & shared a common law
so that he action of apt with six or the extra p
p. 1000 4. 1. 5. 188. 477.

There may be then in no safe framing, no details
of 1800. & you must resort to the articles. I
must mention these two things about it.

At the following occasion on a grant was made to a
man a vegetable instrument. I gave to a boy, who
was on the bank of it a promise to give it to him if
he would bring me a specimen of this animal. I
was not able to give it to him. He died. 1867.

In that way we make our lives worth.

The p. 2. is to answer this very thing, because the action is
that the person to whom the process is made, and
only has a right to bring the action.

There were however within the prison one million times
 as the prison was made every time the whole
 this stage of nature is actually conform to the natural
 the prison to release the prison was made. This
 will probably go so far as that the only way
 from now on it.

and as no objection to my
signature on her Death and in regard to her
on her final was only agreed to pay her bill.

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To provide for his daughter he was obliged to write
 as his son that he had been obliged to sell some
 of his own things for the daughter's education
 and in consequence that he would not be able
 to pay her a £1,000. He was a provision
 to the father for the sister's benefit - the son was of
 private sale - was not to see him or the parent
 The sister said there was her own name to the it was
 at the action 1. H. 6. 316 Str. 573.

There has also been a case in the B.C.

There is a case in B.C. respecting a man's house
 paid by mistake to an agent - was sent answer of the
 agent but of the principal's benefit

This may now be given.

As always bind the contract as far as to give the
 rule this is to be determined from the nature of the
 thing - if it is to be the only the other is not bound
 1. H. 6. 316 Str. 573.

There is an case in which all the parties are involved

The government of France contracts for ships in which
 at the British government & promise to pay - one of
 them was brought in from her residence & family
 & the other the other was not to be as usual was given
 to some agent. 1. H. 6. 316 Str. 573.

A captain of an English vessel was obliged to give a
 letter of his account to some agent & to pay for
 a contract for the ship - there too the action

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 was left last to the one home in the same
 ty. A. C. 1874.

If you do take up some on either of our papers
we count of the oftentimes take up on either of us
some changes and then with making you our
house of the taking yours on and after 200.

Palmer, in 1840.

As to the question when they may be seen, they would be a particular top & to some extent the vessel is well adapted to stream in the top & forward as when a four foot party is out it would amount to not an overboard. If no person sufficient number to man the vessel to man could be in a first town - he is a small party.

24. 2 178.

When there is a number of plants as well as a few small ones - The recipient of them are two cases dried by the saline sea they exhibit a fine green color and have a very strong odor. Hb. Acad. L. N. 188.

When there has been such a connection between the parties that the there is no record of record in favor of them all one of them are

When a particle is, if the solution is in motion, as in the case of a solution of a gas in a liquid, the weight of the particle will be less than in the case of the particle in a solid. This is because the particle is surrounded by the liquid - of which it is a part of the solution, and is not at the end.

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If parties are not agreed on all of the terms of a contract, it is void. 2 B. & A. 671, 147.

If there is a partial agreement, & before the contract is executed, there is a breach, there may be a discharge by the parties - but after there is a breach a contract is binding without consideration is an offshoot - a regular contract has been made & is binding without consideration. See § 699, am. § 834. & §§ 844, 845, 849.

There are contracts where there are mutual promises for a promise for promise. Suppose, for example, I agree to give 30¢ of tobacco to you - when I have done this you promise for the money I will accept. But if the promise is for 30¢ in consideration that I have done so to deliver him a cow. Suppose you at any time, or must have been mutual promises. Holt 88

I shall now go on with the contract of sale & return more money, such as I can. I mean, I mean to deliver him, I am doing it you may observe that many of the rules apply to other sales.

Tender

There is a good definition in all cases where there is a debt contract or a contract to be performed. A tender shall eventually produce the same result as the debt itself - but before the challenge is made upon the debt of the debt. If the debt is not paid, the tender is not a good defense at law that is the case with all debts & tender is not a defense.

As to the tender of a good defense, it is a good defense.

This applies to an offer of a contract. When one makes
which is the action of the law at a time at
though there is a just requirement - however, his
offer that it should first be requested to give them
in the contract - and if it is not a contract - it is
then it is a contract of money - damages is of
no account

It is unnecessary that the contract should be made
in the form of a deed - It is not so. What is said
is not to be known that a contract is made in good or a
guarantee is made. But in the case there must be
some contract

There is an offer to pay a debt or to give a deed,
when a man makes a bid it from his own account
or when account he makes it - but this I have
in some cases been asked. See 70.

In some cases, explain what is an offer, it is to be made
before the offer is made, & then I am ready
to give it for that note - there is no tender. In most of
the cases that is the most of the time a good account
See 100 & 60. 114.

With respect to such & other stock, it has been held
in, that an offer to transfer stock at the time approved
upon is good - an actual transfer is necessary.
See 777. See 686.

At once of money. In some cases it seems to pay
you will also in the same making the tender of
the stock to what I have in the case & if the money is to
be taken as tender.

There is a question whether the tender must not

Under the power given - If a tender of his goods is made
 and is not allowed to remain, his goods are forfeited - if it
 is accepted to a particular point of the goods are not his
 again unless the goods are sold.

But money is a tender which is made so by the
 act of the tenderer. It counts at once, not on the con-
 tract medium - before is no time & no loss to either
 party.

A question was arisen, that is, whether in the
 N. L. whether a measure which operates after
 the fact - when money is tendered - is not to be
 taken into account. In the N. L. it is to be taken
 in principle we should say the same for money
 the fact of the money being tendered is to be taken
 for not measuring time. It is a point of law
 in question to L. 11. 206 & 207.

I mean to be the opinion, that a tender of his
 own goods is not.

The N. L. & they mean can be there, no money
 I cannot see to it for

As to articles to be tendered - in quality they must be
 merchantable unless otherwise agreed.

As to the effect of a tender - in some cases, to be
 discharge the debt or duty - in other cases, but does
 not remedy.

In all cases when a lien is created a tender discharges
 it - it is a case of a mortgage on land for a £
 100 - a tender of the discharge, the mortgagee who
 has a lien of which not money - a tender of

then discharge the Debt & so 22. to 24. 507

As it is said down here into an error in contract money. As if the Debt or Duty remains, then a debt remains, but as a deposit one. The 10. makes the tender holder of the money to the owner of it & you must recover on the note if the tender is not duty. The principle of both the former note must be discharged. The case of Davis v. Smith is not on this subject.

Is a common principle of the Law that whoever ^{tender} money, makes the same advance as if he had paid it - the tender must be viewed as similar to the tender, who is to receive it, must discharge.

There was a promise in the book 1783 that would not be improved, but he said the debt was to be come it remains. Whether a great question remains many of the later passed his to prevent the collection of these debts in the face of the law, & there was some like to produce a rupture.

In case of a mortgage, a tender discharges the loan the Debt & Duty still remains, as given that the loan is similar of the money. v. Mill. 207.

When a man makes a tender he must have all the benefit of it, & again become a debtor, if he is found to deliver the money which calls for - he must so set his debt. The tender must be a money of one it might be to add it to his debt - for he is supposed to have the money in his possession. 1. 340, 178. 2. 340, 178. 3. 340, 178.

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When the consideration actually passes to the tenderer there can be no difficulty - the tenderer shall have all the benefit of pay^t - as in case of a man - because the tenderer is holder of the money. Bro. 1. 181

So if the remedy is complete & effectual at law, there there can be no difficulty - as when one man is bound for stock on a certain day for £600 - the man was ready to transfer at the place & on the day & then was paid the money - & it is no more for you when remedy given at law; but there are cases which are otherwise Bro. 1. 181, 2. 182, 3. 183, 4. 184, 5. 185, 6. 186, 7. 187, 8. 188, 9. 189, 10. 190, 11. 191, 12. 192, 13. 193, 14. 194, 15. 195, 16. 196, 17. 197, 18. 198, 19. 199, 20. 200, 21. 201, 22. 202, 23. 203, 24. 204, 25. 205, 26. 206, 27. 207, 28. 208, 29. 209, 30. 210, 31. 211, 32. 212, 33. 213, 34. 214, 35. 215, 36. 216, 37. 217, 38. 218, 39. 219, 40. 220, 41. 221, 42. 222, 43. 223, 44. 224, 45. 225, 46. 226, 47. 227, 48. 228, 49. 229, 50. 230, 51. 231, 52. 232, 53. 233, 54. 234, 55. 235, 56. 236, 57. 237, 58. 238, 59. 239, 60. 240, 61. 241, 62. 242, 63. 243, 64. 244, 65. 245, 66. 246, 67. 247, 68. 248, 69. 249, 70. 250, 71. 251, 72. 252, 73. 253, 74. 254, 75. 255, 76. 256, 77. 257, 78. 258, 79. 259, 80. 260, 81. 261, 82. 262, 83. 263, 84. 264, 85. 265, 86. 266, 87. 267, 88. 268, 89. 269, 90. 270, 91. 271, 92. 272, 93. 273, 94. 274, 95. 275, 96. 276, 97. 277, 98. 278, 99. 279, 100. 280, 101. 281, 102. 282, 103. 283, 104. 284, 105. 285, 106. 286, 107. 287, 108. 288, 109. 289, 110. 290, 111. 291, 112. 292, 113. 293, 114. 294, 115. 295, 116. 296, 117. 297, 118. 298, 119. 299, 120. 300, 301. 302, 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

The absence of a party is that no tender can be made unless one is necessary. However complete tender must be advised, & then the tenderer is entitled to all the advantages of an actual tender.

At what place shall a man tender?

When we suppose no place to be fixed. A promise to pay B £100. Is it the tender must be made to the person. What is meant by this? A man in St. James. I give them on the day the tender is to be made, & finds that B has gone to Vermont - now he need not follow him - the B don't mean that you must always tender to the person - & in this case you have tendered where he was supposed to be.

(But had A written to George you could not tender at St. H. - you are subject to his removals & you must tender at the house where he is presumed

to be if he has no place find. If the answer is
so that you must not at him, you are excused from
proving him.

When you are bound the place should be long to
find.

But if no place is found the legal construction is
that it shall be at his dwelling house. If he
moves away and not prove him, and if he is not
agreed to you then you are

in what this is a bill of exchange when there is
no answer to the terms of the promise to
convert him to deliver them at some place, if it
should be no quarter delinquent to him, then when
in default must find.

Suppose I have a bill of exchange a note of \$100
- his note to A. B. of Townsford when is it to be
paid? Townsford? if he puts there is a difference
- the bill protects the agreement. I. B. may be a
bankrupt. I put him up. Noth. a. in house I
would this wrong? I. B. is a bankrupt who did you
know to have with what is to be done? The prom-
isple is this you are not to throw a quarter back
to on the answer than was on him before. How??
Bro. 2264.

Suppose the day find I the time made certain by
being payable at the last business or near month of
the year may be found the effect of the day if he
find the year at home seems it not - to make
the tender good, it must be on the last day of the
year is not it same, Bro. 2271.

So if freight is to be made on or before one business day
the same principle governs. § 60.114

So then even it must not only be the last day, but
the most convenient part of it - if he moves it
must be so that it may be made by day light
- if he waits as a hundred years of delay it must
be unreasonably by day light. How. 174. § 60.14.114
Co. Hill 122.

Sometimes the business is such, that it must be
made in the most convenient part of the day
then you must go within the hours of business or
within the hours. How. 177.

If the time is certain & no time is fixed to come
it is determined.

The doctrine means nothing. then he tender at at any
time & the it is the promisee must give notice, & that
must be the time of them is an unreasonable objection
Co. Hill 11. § 60.72.

If the party meets at the place the other party, the
no time is fixed, a tender at that time is good. § 60.114
How. § 114.

Since he is a person in good the he was only the
equitable party. yet a tender may not always be
made to him who has the equitable party - as in
case of a party as an - if however the bond had
been to a person, if he would pay the debt you are
so much a tender to the creditor as would be
good. How. § 78A.

The thing brought in belongs to it self the one
 Dist. you as know.

Then one some states & in this also when the one
 is alone & the one is alone as is one of a pair
 of the piece at it then is no such thing.
 Mr. 1227. to 12597.

Second & Satisfaction

This is an entire Debit. meaning for the Debit
 under it makes universally all articles of Debt,
 & all debts are taken a single debt in the Debit. it
 means a taking up & actually receiving something
 for an injury - accord is the agreement & satis-
 faction the receipt.

Then don't much care when the debt is paid, be the
 specifically. I contract with A to pay him so much
 money, if he don't build him a house in six months
 - this don't care out of the debt. But if a contract
 into a bond for so much money, not depending upon
 a subsequent event, the debt is paid out of it spe-
 cially & accord with satisfaction is not a good plea
 for new accord come destiny & specifically.

Under the Debit is a man may be paid
 to a bond - then in this case must it to be paid
 that has accord, & must to receive the same spe-
 cially in the condition, turned in no greater in-
 terference of the principle. Then that under the
 Debit, you can plead payment for bond without it
 being in writing. 1. B. 1227. 12597. 1260. 1261. 1262. 1263.

This point has been visited but not settled.

There is ^{nothing} ~~nothing~~ in a man's action - he cannot do
good or evil - it is not in the power of man to
do good or evil - by the Law of the land this can only
be done by deed - it must be a foundation for
right or evil, to compel a conscience.

According to the and must have two qualifications

1st The agreement must necessarily have some inducement, which in I would be the promise of an action it must be of some previous advantage or disadvantage.

The thing I am must be the main thing. Suppose
I always an action on it for taking the matter
up. I am sure that I have required that the thing of
love in it. & that I should have made it
again. I. Col. 188. 4. Mod 88.

And this must be a full ratification, in
 reason, that it ought not to appear to the
 face of the record, that there was not a full
Rev. 446. no. 1. 199. 2 to 79. 2. 11th. 86. 1st. 125.
 4. 110. 8.

to, & too that it must be certain.

the thing won - this agreement must be made
the thing agreed upon to be done must be done
1. vol. 92, p. 115-67.

As to Reading

The old English mode has some place to it, & one
 can best be the old one which is that the p^l & p^l a
 good to take such a man by the p^l & p^l & the
 p^l & p^l now they have nothing to do with a
 cord. the p^l says the p^l ought to be carried &
 because in some time or such a day a certain man
 the p^l & p^l it as satisfaction. & so the p^l & p^l.

Minors or Infancy

This is a great point in all courts - but for no
 purpose is. But, unless they are such want in case
 with but by one policy as in slavery. but
 if the infant is minor, the p^l is satisfied. But
 the p^l says that he is another the p^l & p^l
 & the p^l deny it. the p^l is left to the p^l
 In such cases infancy is no defense.

The old rules are all as for infants. But a man
 for p^l in courts. The modern rules show that the
 court with these decisions.

How the p^l became established & so on. the
 old courts admit that he may be indicted for
 fraud - thief, false v^l & so on. & the p^l & p^l
 show that he is to be indicted. & the p^l & p^l
 is liable for fraud in a suit, or for p^l in a
 cause a suit.

Infancy is a great point in all courts - but for no
 purpose is. But, unless they are such want in case
 with but by one policy as in slavery. but
 if the infant is minor, the p^l is satisfied. But
 the p^l says that he is another the p^l & p^l
 & the p^l deny it. the p^l is left to the p^l
 In such cases infancy is no defense.

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Contracts

§ IInd that when the offer is to sell, the offeror is bound to deliver.

The action of assumpsit may be filed in any court in and under the 4th June.

As to the elementary number, that you are required to put under the 4th June, because all cost of interest are paid - this is not true for you may be in court under your assumpsit any thing that shows that the debt would not be made.

As to the plea of infancy the plea implies one of a minor - this is not the plea of a minor - it is not then a plea of infancy, but can only be a plea of necessity. If the action is brought on a bond, & the plea of infancy, the plea will imply one of necessity - he will be liable on the original contract.

The most ground of an infant's liability, is a promise to the infant to be bound by a contract, or a contract - you may assumpsit on a plea of infancy a subsequent promise to pay, which acts up the original contract - if the contract was originally void you must bring your action on the subsequent promise - there is no case when the action is brought on the original promise.

Part II

There is another defense which has been brought before the court - it is a plea of assumpsit, which is the plea of assumpsit, & a bond it must be paid directly - the plea of assumpsit is that you must set out

Contract

what the Dumps was - no replication can be given to the plea but a denial of it - unless the fact stated in the plea does amount to a denial - then you may answer to it.

Illegality in a part.

This has been already considered in another section. It appears in a plea as the case may be - for when you sue upon an illegal contract, you state just what the contract was - & when stated to of course is immaterial for it is illegal on the face of it - still illegality must be shown when it does not appear upon the face of the plea - as in the case of a note of hand which is not a security for an illegal contract - then you must plead what the illegality was, & then can be no answer but a denial of it.

Judgment.

This is also in many cases, a plea to be taken - & the plea is now must in the same way as your replication that you did in the other, you are bound by the former judgment. This is contained in art. 104.
2 Bl. 1. 774. 842. 3. Wils 240. 404.

Release.

There is one species technically called a discharge that is different from a release - the former is the this

It agrees to deliver 340 bushels of wheat within a week before the wheat comes to market to pay for it. It agrees to it - this is a discharge - But has the wheat paid for a right of action against the wheat co. There must be a consideration, & then if the wheat is paid by any of the wheat co. then it is according to the law. It must be under seal & not - the reason is that there is no consideration without which it is an unenforceable contract - but a sealed instrument imports some consideration. See § 620. See 620. 1. 180. 205.

A release may be the very last defense - for it may go further back than the demand - the only question then is what is a demand?

Suppose A owes a debt to B payable in a year. & before the year expires, B dies. All demands, on the discharge the bond & the bond & the bond & the bond.

It will now release a demand under the law. See 620. 1. 180. 205.

It seems under the demand is not out of a case in which the release is not a discharge of the debt. A man & his wife - before a demand is made, A & B settle & give a release of all demands he has as to afterwards he has been his best friend. & pleads the release. The court says no plea. 3 L. 106. Co. Litt 292. Bro. 170.

Affirmation.

This contract is an important subject, of which I shall give a full view.

This is a law to correction brought

Contract

for the same cause which has been submitted. An award is an opinion of persons or a panel submitted. It is in the nature of a judge - This is not only a bar when the deft wishes to take advantage of it - but it lays the foundation for an action, when the plff wishes to take advantage of it.

This award is a defense in all legal actions, except when the rigid manner operates, that a panel award is no bar to an action on a specialty, when the debt grows by the deed itself - as in this respect similar to an award & satisfaction - but if there is an award towards be a bar.

An award respecting real estates is irregular. you cannot give a title to the land - but here as well as when a bond was submitted, if there had been an obligation to abide the award, should there have been a suit on the original cause of action, the obligation would have been perfected & a measure laid up on it.

The arbitrators are appointed by the parties - the suit remains one of two kinds, one by legal & the other voluntary - in them is in being an additional security given, viz, if the party complies with the award to a contempt of it, & he is of course liable to an attachment - tis incident to all its to have this power.

The power of arbitrators is very great altho the parties may contract it - thus here, if you submit, the power of a court of law eqly to settle the dispute & soon that there is no more. they may not only introduce legal testimony but each may appear to the others conscience - they may do all that the parties could had they had a trial in equity.

When the parties limit them to the 4 of the 5, by
they have then must act or then do more - if to those
of 6 as a 4 of 6, 8 - if they don't so act the
award must be set aside.

The arbitrators can award a collateral act to give
in satisfaction of a claim which a 4 of 6 can't do
- but this is controversial to the parties.

The award by panel may be as good as any other
to submit the parties to a necessary act - the award
must be as much as a final act does.

You may bring an action of debt or ind. of the
one on the implied promise to submit the award. the
usual way, is on the implied promise.

The submission must be by panel or by award.
If by award the award may be by panel.
This too may be restricted as the parties, except the
instructions are made by the arbitrators.

The usual way is to make the submission, & then
give a bond conditioned to abide the award.

This bond can't prevent the remedy on the award if there
is nothing awarded in it. The original cause of action
is swallowed up in the award - but the bond doesn't
swallow it up & certainly not the award - for the
bond is given to it. You have a higher remedy
don't prevent one on the award - for it does not
the award - to only collateral with it.

This rule so given is uncertain at any time you
please - the consequence is that it may often destroy

all the efforts of the arbitrator - if the arbitrator
is the first thing, much he must - if in writing
his & they wish in writing this & then I mean
a power, the to report.

If the arbitrator knows of this innovation, before he
arrives, then only ends - & the bond is forfeited -
then it is however & those of the chamber down the
bond, & give the party all the expenses he has been
at, & give him 1000 his time & trouble - & if you are
satisfied by your costs - the principle is to increase
for him, if they choose at all - if they don't his costs
are payable.

The old it used to be to obtain technical evidence, & then of
him to sit and receive - now now - it is to receive
& effect given to award - hence the award can include
dictary

The old it was that the arbitrator should be under
cut off it - now he is after made by a R of it, first &
to themselves - afterwards by stat.

A submission by act of the parties may be made
or in writing - if verbal it may be made by an a-
greement to submit without previous to send the
award, or with it - if such previous is made it may
be with, or without a reservation - it makes
no difference now which way it is the former is
old L. Reg. 24b. 182.

If the parties had entered into some act, you would
see on them & answer - the & just changed when there
was a previous with a reservation, as a part of
mine - then if a collateral thing was concerned they
would they report the award - hence then into

there are no circumstances you could see in the
business. Afterwards lower held, that if there was
no promise, you could see - because there was an im-
plied one - & that there was no intention whether you
got a promise or not - whether too in writing or
not, or whether written, or without a written
form - yet the submission was on the uniform prom-
ise in C. Ho. 15. D. Ho. 161. Ray 165. 1037. 1. Inst. 34.

The common way is to give power to decide by the
arbitrator - choosing sometimes to be usual, on submission
into partnership, to agree that if any difficulty hap-
pens to submit it to arbitration. If then any party
meets his fellow, is the it decided by the arbitrator
then by this previous agreement?

The first thing is that a party who has his bill ac-
cepted, could be obliged to submit. If the other re-
fuses, or the arbitrator would avoid, there will be
no objection to his filing a bill - so too if they make
a bill avoid - as it of to court do that. Atk. 585.
L. 2. 310 10. Hod. 58.

The state of the submission depends on the parties -
The arbitrator must all agree in this award or
to void, unless the parties otherwise agree - for there
is a great rule that all must concur - it could be
reversed - But if the submission is to the arbitrator
and of C. D. & C. or any two, or award by two is
good - so if there is no reservation of this kind, &
one agrees to act two ways forward.

The submission may be made too, & then the party
may see on the original cause of action, as well
as before D. 40 D.

Contract

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If there are two or more who join in a submission, one can't revoke it - for as the submission is not good till all who submitted revoke. §. 60. 20

Marry by a woman is ad to be an implied submission when she has submitted. She can't retract, but the L. is so laid down by ancient & modern writers.

Who May Submit

A free person may who can make an offer, & receive it. He can't be bound by the award, unless he has submitted. & he is bound by the award.

Thus formerly a question whether could bind himself that a man should make an award. His matter is at last completely put at rest. The man is bound by his obligation. §. 107, 3. Sec. 17. 18.

One can also submit. If he is of his own free will, he is bound. He is submitting by making an offer. - for the other may claim that he ought to have got more than the arbitration gave him. & this being shown, he must pay the difference. - but the offer is bound by the award.

Who are bound to accept of an award

None only who are parties. by this it meant that those who are not parties can't be bound, unless they consent to be so. to bind them §. 107, 118. 2. Sec. 17. 18.

Suppose there ^{are} any instruments who agree or sell to
 subject, & sign a bond. When the deed is made the
 one bound by it is much as to obligate the bond. & the

every thing that the H. paper is right of his H. that
 in any dispute of during execution he may submit to
 arbitration. He is bound the H. dis. if he not disposing
 it during execution he not so.

It has been so, that when an executor has been named in a
 testator & he dies, no action of debt could be brought as
 the estate because the testator could wage his H. & the estate
 could not do it - but this is not so now, tho it may be a
 way of technical reason. See 1. 66. P. 1. 2. 3.

This is a dispute in every thing made when the H. is
 given by the testator. However there are certain
 things, which he may think not outside of being admitted
 to arbitration, or that cannot concerning them could be
 paid. See 53. 1. 2. 3.

If there is a submission about debts, & a bond is given
 - then it is the same as the bond is signed. See 1. 66. P. 1. 2. 3.

Who may be an arbitrator

There is some difficulty - in certain relations some are not
 arbitrators - but I do not think - that in every case - some
 can be named the same as in every case for the most part
 since the contract of either or more parties the first rule
 may be given - all sorts of things or persons - who
 themselves are not in the relation of arbitration. But you see the matter
 - I know of no case to the contrary. See 53.

he has not seen the question of contract - but we
 in some way must have it now to be so far from us to
 make a decision to a satisfaction

is a common thing for men to leave matters to con-
 sideration & if they don't come to a third party will be
 in - more than sometimes chosen & the arbitrator
 some times act in the name of the arbitrator - the
 recognition both L. H. 185.

If a reference is made to A. B. & if they don't agree to
 in case of a new agreement by A. B. & may be.

A great question has arisen whether the arbitrator
 in some case make an award before the time limited
 for the arbitrators has expired - there has been some
 doubt about it because so long of the arbitrators & if
 they might afterwards refuse. This is unsound. If the ar-
 bitrators make an award by the time limited & the award
 is made on the latter month in no. The award is
 then the award was made by the time limited -
 if the arbitrators don't do this it is good L. H. 185 of Jan.
 186.

Another question which was left to the arbitrators to ap-
 point when if they don't agree by the first or second
 award it is done in the name of the arbitrator. The award may be
 chosen at present - the usual course now is to choose an
 umpire before they begin. They not awarding within
 the time, the umpire may - the end of them is that
 that no award is made by them within the time
 this is conclusion.

Another question. The time has been no decision
 whether the arbitrators, having no respect one year
 time & in London & abroad he can appoint another,

It is now settled that they are a plaintiff, till an award

Qualities of an award

This may be shown by pointing out what will make an award bad.

1. The award must not exceed the procurator - i.e. it must be about any thing that is not submitted to them - If it is too far beyond that is the whole void? This depends upon equal the principles - when injustice is done to the whole, the whole will be void. If part comes, injustice this except is void. 1. Mod. 307.

"All actions shall be submitted" By this is meant all actions existing at the time - not grounds of action - if the award had been actions & complaints, they would have included all - even if "injurious" toward them in the same.

Whether they may award any action of them, in satisfaction for a final award, or any other of the same kind, is clear. But perhaps, not this is settled. I think they may do it. It is an award of the court. 1. Mod. 1031 & 1032. 70.

"All demands" include every thing, & is more clear in 2. Award 120

When parties in law submit all disputes, the arbitrator may dispose the party himself. He is not bound to submit the contract in the submission - but must in the 1. 30. 1. 472.

It is a reference at one from *James*, I don't make a reference and used. As a R that if they submit and dispute in it, they may include all disputes before that - this distinction is taken if the submit all matters in dispute ^{the cause} between the parties, this means only the particular cause if they submit all matters in dispute between the parties in the suit, this includes all disputes between the parties 2. Bb. 1. 118. 2. 118. 644.

The 11th as laid down by the elementary condition is that the award must not extend to causes which is a stranger to the submission. This R. must be understood with great qualification. Award to a stranger is never void except in no way beneficial to the person in whose favour the award is, & the compliance of it 8. 60. 77. 1. 60. 131. 1. R. 9. 114.

It is always to be presumed that when an award is made that when one party is made to another, his complaint to the parties 1. 118. 74. 1. 60. 66. 1. 464.

So when they awarded about every thing but a bond & let that stand, this was good. for they did award about the bond. they only were inaccurate. *Lawrence*, 60. 6. 118.

So in such a R. submission, the award is presumed to be good, unless it is shown that other matters were laid before the arbitrator. *Lawrence*, 2. 200. *Bras*, 274.

If it be a specific submission, as an action of trespass with such a clause as this, "that they shall be bound by all matters respecting the premises" they can decide about the trespass. 8. 60. 18. *Bras*, 2. 118. 1. *Lawrence*, 30. *Bras*, 416.

The award is void if he to do any thing contrary to the

And the said terms for any award, is that if the arbitrator awarded that the award should be given when none could be awarded at all the award is void. This is not a law (D.D. 2. Kent 244).

The award must not be so made as to be not only impossible, but also that there is no compensation put up to offset this is one of the points, but that award is impossible.

The award must be reasonable. There are certain things which are to be considered; there are things which need be supposed to be in the contemplation of the parties in making it.

There are some vice cases in the book. A man who was to be paid at the house of a stranger. This was thought unreasonable because he might perhaps be used for his paper. But now such an award is good. He cannot say things which are to be done as an award that would be supposed to be contained in the stipulation is void as being unreasonable. See 12 L. 3. Law 58.
2. Mod. 304.

Another quality of an award is, that it must not be made unreasonably in itself. Now this has been made questions that can't belong to it, as when the award was that the spot should go to the party for carrying - for the party his business - this they say was a bad award, because it was not advantageous.

There is a case where a man & a woman entered into the arbitration awarded, that they should be put into a house - this award was bad though on the ground of no advantage - this is doubtful - to which is unreasonable - by force of law in no sense to take over, but it is not a

might to keep the arbitration awarders that should be
 done - this was not done by the 1st to be awarded -
 now - the arbitrators not to be formerly - for it must
 have a consent 1282

The award must be certain - the 1st R. says that it
 must be certain on the face of it - the 2nd R. says not
 so - saying that it is certain that can be seen so long
 as it is - as when they awarded that the costs of a
 certain suit should be paid - this was uncertain on
 the face of it & void according to the 1st R. - but now
 you may make an award that the costs shall be so
 much & then you that the award may be certain -
 But if they award that it pay £50 more or in case
 conscience be ought, it would be void by both these R's.
2. Award. 1282.

The another can they award in favour of A that A shall
 not molest him, & shall give a bond that he won't -
 then there is no uncertainty - for there is no more re-
 quired, that shall be void in the word 1285 & 1286
1287 1288 1289 1290 1291 1292 1293 1294 1295 1296 1297 1298 1299 1300 1301 1302 1303 1304 1305 1306 1307 1308 1309 1310 1311 1312 1313 1314 1315 1316 1317 1318 1319 1320 1321 1322 1323 1324 1325 1326 1327 1328 1329 1330 1331 1332 1333 1334 1335 1336 1337 1338 1339 1340 1341 1342 1343 1344 1345 1346 1347 1348 1349 1350 1351 1352 1353 1354 1355 1356 1357 1358 1359 1360 1361 1362 1363 1364 1365 1366 1367 1368 1369 1370 1371 1372 1373 1374 1375 1376 1377 1378 1379 1380 1381 1382 1383 1384 1385 1386 1387 1388 1389 1390 1391 1392 1393 1394 1395 1396 1397 1398 1399 1400 1401 1402 1403 1404 1405 1406 1407 1408 1409 1410 1411 1412 1413 1414 1415 1416 1417 1418 1419 1420 1421 1422 1423 1424 1425 1426 1427 1428 1429 1430 1431 1432 1433 1434 1435 1436 1437 1438 1439 1440 1441 1442 1443 1444 1445 1446 1447 1448 1449 1450 1451 1452 1453 1454 1455 1456 1457 1458 1459 1460 1461 1462 1463 1464 1465 1466 1467 1468 1469 1470 1471 1472 1473 1474 1475 1476 1477 1478 1479 1480 1481 1482 1483 1484 1485 1486 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2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 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The award must in first not that there can be any suit brought - but that there shall be no suit on the original cause of action - because if a bond is given it lays the foundation for an action. The parties have had suits in each other - they awarded that all there suits should stop - & it relate them & say they would that each party give his own evidence that say that this is to an end to the suits - & to the original cause of action - because this is fairly inferred from the award no. 274. Sec. 988.

They may award a thing to be done at a future day but it must not depend on a contingency - if it does his award Calver III. 1. Sec. 64. 84.

Construction of Awards

This must be considered to clear up the important question, whether an award void in part, renders the whole void. But 2.

The 1st 2. was that the intention of the arbitrators should be ascertained & the award taken thereon. 63. 84.

It is not now - the intention must be as much regarded as in a will - the award you give the intention you establish the - such a construction is to be given to support them if possible. Id. Reg. 12. 612. 613. 84.

Awards of Arbitration

This if it is - otherwise there is an award on both sides

an apparently due effect to the award, it must be accepted with 2 Inst. 84. (C. 11. 111) (C. 11. 111).

Performance of an Award

It is necessary that the award about which is made, be actually performed. C. 11. 111.

When a performance different from the award is accepted, you shall performance & show that he is not a different performance - for his not accord & satisfaction - if the performance is prevented by the other party, so that it cannot be performed, he may settle it as an excuse - then he must perform to perform.

There is one question settled different from what it used to be - Payment is ordered to be made in months, hence & should be made in months, given for the performance of the award at the end of six months if the money is not paid - in ordinary cases the lord would be satisfied - but here if the money is not paid, the action is brought, then can be no excuse, as it says 111.

Remedies to compel Performance

The award, or a verbal submission, then seems to be a contract to perform, is to bring a suit or a performance, or an act contained in the submission to perform it - if the there is a condition and the award being an act action on the act contained in the submission & that is the reason why it is an act - In doing this you must state the submission as introductory to your action - you

must take it as it was - that you be not doubting that they were not taken upon by the parties & then awarded &c. & then assign a verdict - there is no necessity in this case of setting the award out at full length - but the ordinary mode of submission is by a bond - & then you will remember you need not run on the bond unless you choose it. Str. B. 118.

If you do this the mode of proceeding is as follows - the bond is found & the writ is brought on the final part of it - the D^t wishes to make a defence - he pleads no award ever made - this is his ordinary plea - the pl^t would naturally say there was an award - the proper way however is, to reply ever an award & shew it ^{at} ~~some~~ ^{some} & then assign a verdict for the non performance - now you have got at the case of action the reason why he must reply thus over & assign a verdict is, that the word "no award" in a plea in this Court always mean literally no award - It may mean this, or it may mean that there was no legal award. If then the pl^t only replies that there has been an award, the question is & whether there was an award or not goes to the jury - After the pl^t has replied over - if the award is bad, the D^t may say - to it & if not he replies the same as before "no award", & this in a rejoinder means no award in fact.

This method is not absolutely necessary - he may have no objection to be bound because 1. Sid. 930.

In the replication the pl^t must set out that every thing contained in the submission, was done in the award. On this point see auth. Bay. 979. Hurd. 998. Benth. 154. Shaw. 98. 242. 3. Mod. 3. 0.

the party has made all the arrangements in stated, which will enable him to a necessary except performance on his part which must sometimes be made, this must be stated if the thing to be done was a precedent condition before the other was to do any thing, he must answer, however in his power - if there is concurrence or inter-quest he need not, except when the consent was not this, that at with his W. coming Blackham to B - then he must agree that they both have done it - under & superior is enough If the thing to be done, can be done without the concurrence, it must be done - hence the question arises, is it right to object to the consent if it is defective? H. and W. 1. to Hod. 36.

The little insect appears a smother. See there is no
action. Two subsequent fixings in the same place. Feb. 14. 78 189.

When the record is first void & put into use again
in the 2nd part, there can be no recovery. Ad. Ray
115. 123, 2d Mo. 307

When an enquiry was that night should be made on or
from the day 4, an assurance that the spot did not give
on the way was seen before to be bad. I that 22d. two £
6d 2. 5 or 10.

There are cases where there need not be an arrest at all
and the defendant may be released. There are within the plea
advertisements at his place of detention etc. Exp. \$60.

When the effect has produced no answer & there has been a
negativation & the effect can carry away or place no a-
nswer.

These notes were the highest kind of dog. no. 1. 200.
 taken 1892. June 6. 4. 30 x 10. 3. 1. 12. 592.

Antony v. Jones made a R. of ct. There are no statutes in this
by a stat. In the U. S. there are not stat. exactly like this -
it is not however to understand it. The reference by it of ct
was made long before any stat. & in the first instance
they would not grant an attachment for contract - 1 D.
452. 1 Key. 36.

They then established this R. that they would, if there
was no other way to enforce the award, grant one, & were
without - in some of the U. S. this is the R. now - but is
not in Eng.

If you want to get an attachment you must call
upon your antagonist for a performance of the award -
indeed he must show him the award, that he may
see what it is - if he refuses to perform & you must go
into ct & upon affidavit state, that the award was so &
that you showed it to him, & that he refused to perform
it & pray that a h. p. may be served upon him, & com-
pel him to answer in law he don't perform - well it is for-
feited - another affirmation is then made that it was
served & the man don't appear, then an attach^t is
made of course. 1. Talk 22. 10. Nov. 999.

But suppose he is attached on the bond & afterwards met
on the award, judgt obtained & his body taken - the attach^t
is then discharged - for the body is as good as cash.

It is not usual for the ct to grant an attach^t, when the
man is sued on the bond & his body taken - tho it may be
done. Hutt. 223. 11. 965.

The power of granting an attach^t is inconsistent with the
ct, altho the award is not - award. Barr. 278.

Power of a Ct. to stay to interfere

When there is one around to do a substantial act, there may be
 time to compel performance - they don't interfere in case
 of money because the money has an adequate remedy so
 they interfere under its discretionary power.

But suppose the subscription is voluntary & the award is to
 do some substantial act. will they then interfere? The dis-
 cretionary committee say they will in some cases & even a per-
 formance. 1. Alth. 75.

What Award may be pleaded in Bar.

Any award is good that has the legal question so that
 the plaintiff can't have the means to enforce by a compelling
 performance. 1. Salt 67. Lutes 56.

When the L is so that a recovery by one is a bar to a
 recovery by another, as when two judges are joined in the
 paper, for a judge by one is a bar to a judge by another,
 the judge is the first way in which it can be an ac-
 tion as the second. Boas N. 748

Mode of Relief as an Award Claimed to be.

This has been considered so far as it respects its of L. Upon
 English principle a Ct of L can only interfere to set any
 award, when it recants the contract or parts of a legal
 one - there are all intrinsic cases appearing on the face
 of it.

But for cases intrinsic an award may be set aside in

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things, the three all suggest have been used as it is
L. had it not been for long & principles. 1. Rev. 915. 2. Alt.
529.

If the award compared with the submission, plainly
shows that the arbitrators, have given direct ly with the
principles of L. they will not order the award. 3. Alt.
644. 2. Rev. 708.

There was a case where some of the arbitrators decided
to get together, & hear the matter privately without
the others knowing any thing about it - they made an
award - but their conduct was held sufficient to set
it aside. 1. Rev. 518.

So choosing an umpire by lot not within the award, thus an
improper exercise of authority. 2. Rev. 585.

So when two arbitrators had been chosen & they were
to appoint a third - they could not agree & chose an
umpire - a chamberlain of the umpire & he knew
what he would do - he would give £150 - he did so - & all
the circumstances taken together, were not sufficient
to set aside the award. 2. Rev. 101.

So when one of the parties upon a new thing happening
was he could prove it if they would - then
was sufficient him to return thus & making the award.

1. Alt. 77. 1. Rev. 917. 2. Rev. 251. 3. Alt. 262. 2. Rev. 706.

Action of Debt.

This is founded on an express contract, in which the certainty of the sum appears, & in which the debt measures & rises in measure with the damage.

The sum expressed here is not to be qualified - to wit - so that the terms of contract are not at all enlarged - but lie - for the terms may be fixed expressly & not implied - as in the case of taking up goods at stores - On this ground a tender made in money, or when the sum is ascertained by the market price,

This action lies in cases of simple contracts where the price is fixed, & the price may be fixed with reference to other things. 4. W. 96. 2 Co. 12.

The debt when this action is supported, must in fact be that of the person who sues, the cost, & not in one that comes in collaterally to pay it - On this account, an action of debt lies on the acceptance of a bill of exchange - It must be q. 6. 135. 138.

Debt lies in one action on a bond - & in this lies the origin in which the only remedy - Gray v. Sweeney for there is a case where a man is concerned in an action on bond.

This requires that it appear that the condition was to do some collateral act. The action is insurable on the bond of the bond, tho the debt may take advantage of the condition if in place, & shew that he has performed it.

There is one species of debt not on bond to recover rent against upon interest the parties - when a man has made money to the use of the other,

should be the rule now, we see in the case a man
was he had nothing to do with the price or any
thing respecting it - but could not the law measure
the necessity concerning him - to - this he can't, unless
it is now - party. This was the old & 7th article by a
stat of the 8th - I suppose the extra could measure in the
U. S. by force of this act, 4. 60. 49. 60. 61. 62.

When there was a lease for years this action always
lay to recover the rent - there was no fraud in
the case, it being now good party, & the sum being cer-
tain, the extra could measure in debt.

So for a lease at will, ~~debt~~ debt is the proper action
where the sum is certain - A lease at will being nothing
now by the stat of frauds & perjuries, it has been a ques-
tion whether debt will lie on it - in point it certainly
will.

It seems to be a principle of the 4th & 5th that debt will
not lie for rent accruing by a tenancy at will - now the
old there is no finitely of court the stat of 12. 11 gave
the action of debt in such a case - I observe this measure
may - for there was one implied case that the tenant
should stay at the old price - the stat may be proper in
our sense - to keep alive the idea that the court must be
sensible to allow the action of debt.

I shall have to consider on this subject debt on bail
bonds & bonds given in it - all these are required by our
first stat - at 4. 6. there was no such thing as taking
a bail bond. Stat have regulated this in, & different ways
- but the principle is the same in all.

Any all require that when a sum is arrested, ~~for~~
a debt whose sum is proved, that the amount is under

[illegible]

The liability of the bail is to pay the whole debt if on the officers to execution or taking the writ. And it will never assist the officer who not taking writ unless his affidavit to your satisfaction that the bail is sufficient.

In place the officer in a uncomfortable situation
 of it seems an important position. There is some talk
 doing much business are apparently wealthy. The other
 talks much more talk the last time is the officer's
 at Port at newspaper decision in Eng. some planning will
 and business is that is not right for the business
 of the business is to be sold.

The object of the loan is to secure the dollar ⁱⁿ the
country which must be lost the bank. It was the
policy to stimulate spending the money has to be paid
in order that money is of the loan.

The English have a view that in sending the troops
you over the water now, & the less must be done to
save time & costs if he has done his duty, & on action will
be on the point in Bay in the afternoon near

The English steel uses the more quantity - there is an
a more expensive when this wood is used in great
amounts is enough - but a few results is not. For
questioned whether two could not be used

it. It ought to be satisfied.

One thing is certain - if you want to take the case on the first objection, i.e., if you want to get the judgment of your execution - you must do it before the time has run. It is in Robt 266 and 6 H.L. 12. 60. 71.

In this action of debt or debt there is no possible dispute as to the point - you must go into an inquiry as to the facts. It is not then a question of law. The point is not then a question of law. But this is no exception of a case which goes into the facts - but to see the question that there is no point.

But you must show that the original contract was made, i.e., for the debt is conclusive of all the facts.

Any matter posterior to the original contract is a matter of fact.

A discharge by letting the debtor out of goal may be set up in the execution - the master has not much more to do - he is if the money is taken on the execution & permitted to go out by the fifth, he cannot be taken again on that execution - & that is a defense to go on him on this debt - One thing is clear, if the fifth takes a new obligation he may set him up & then on him on it.

He shows that when you put him to the proof the law is that he has paid the debt - about the payment of the debt what kind of a case is it? I want it to be understood. Why not? I know the burden of proof is upon the plaintiff - but let him prove it. He can, 2. Ho. 62. Rev. 2. 69.

As it appears that it is not a sin to be a
 without a satisfaction & ought to be shown to be such
 The technical meaning of a sin here is a sin
 presupposing to be an agent not such a demand for
 the satisfaction of it.

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Stat. of Courts and Promises.

There is a material difference at L. & between written & unwritten conds. Courts at L. & are either simple or special - A court under seal is a special one & one not under seal is a simple one. The former always is written - the latter may or may not be. The distinction introduced by the 29. Car. 2nd, which is the stat. of grounds & promises is different from the L. & distinction - the Stat. distinction relates to written & unwritten conds. The stat. of T. & C. in force was enacted 1771, and as far as it relates to the same subject is a transcript of the British stat. 1. Geo. 3. Stat. c. 216.

Under this stat. there are certain courts which must support an action in L. or equity, unless the court is reduced to writing, or there is note or memorandum of it, signed by the party or his agent. These courts are of five kinds in force.

1st Promises made by an executor or administrator out of the estate, for the debt or duty of the testator or intestate. These courts are not binding unless reduced to writing by the provisions of the stat.

2nd Promises made by one person to answer for the debt or default or miscarriage of another, one in the same condition.

3rd Agreements in consideration of money, i. e. money and things are void, unless in writing.

4. Courts or sales of lands, tenements or hereditaments or any interest in or concerning them - it should be excepted for the sale of lands &c. & this was upon the construction of the stat.

Leases not to be permanent within a year of the time of making them

By the English stat. there is another class viz. all leases of lands tenements, & hereditaments, operate as leases at will except leases for a term not exceeding 3 years, & reserving $\frac{1}{3}$ of the improved rent. The judges of late have considered these leases as leases from year to year - not as leases at will - so they can be determined only at the expiration of a year. 3. R. 16. 4. Do. 680. 8. Do. 9.

Again under the English stat. all sales of wares goods or merchandise, unless part of the consideration is paid when they are of the value of 10 £ or upwards, or unless the goods are pawned on account of money paid; when none of these things take place & the sale is not in writing you can't compel a fulfilment, either in L. or eqty

Our stat. in this makes no such exception as to leases of land &c. for it makes no difference, whether the lease is for three years or more - All leases or leases are void here. i.e. they are not binding, tho they may operate as licences.

The object of the stat. of T. 2. was to prevent persons from proving agreements under the stat. by parol on account of the improbance in some cases, & the facility of practising fraud in others.

Let us examine the five kinds of contracts - 1st As to sales & debts. It has been supposed that if the seller or debtor has assets in his hands, to answer for the debts of the deceased, a promise promise is sufficient to bind him. But there is no duty for this &c. & therefore

no reason in it - for if it were the stat. would be the same as the C. C. T. R. 480. 1. Key. 124. 1. T. R. 8.

It was once held by 2d Sims that a proof of assets in the hands of the extor, would imply a promise in his part to pay the debts of the deceased, out of his own private property - but this is not L. T. R. 10. 60. 128.

It is also not that if an extor or adto submits a claim as true to arbitration, that this was a proof or admission of assets on his part to answer the claim. But this is not L. T. R. 692. 7. Do. 459. 2. Do 6 contra.

But if on submission the arbitrators award that he shall pay a certain sum he can afterwards deny assets to that amount because this equivalent to a finding by the jury that the testator owed. L. T. R. 459.

But finding that the testator owed money does not preclude the adto from denying that he has assets. I am now considering this award as regularly made.

Again it was once held that the payment of interest on an extor was admission of assets to the amount of the principal. But this is not L. T. R. 8.

The acceptance of a bill of exchange by the drawee's extor is an admission on his part, that he has assets to answer the bill - this acceptance may be written or parol. Chitty 423. 1. H. R. 682 622 1. Wils. 1. Str 1260. Burr 1245. 1. T. R. 487.

The R is the same as the extor of the holder of a

bill of ex - por if he transmits or indorses it he is not bound notwithstanding the stat - i.e. he is bound in the same way as if holder had indorsed it. Chitty III. § 311.1.

As a promise made by an ante to pay the debts of his testator he is bound to writing, still he is not bound unless a sufficient consideration is shown - the object of the stat is to subject him only in those cases where he was subjected at C. & A. to this rule so memorandum is only a simple contract, & never implies a consideration - even if the writing expresses a consideration it may be rebutted at C. & A. R. 950

I think his not so in non - por here any contract, sealed or not, is a special case.

I have seen argument case where his indorser, that the consideration of the promise must appear in writing & that final end to show that there is a consideration is inadmissible. S. East. R.

I have already sd that altho the promise of an ante to pay the debts of his testator, is in writing, still he is not bound unless consideration is shown - & it must be alleged in the bill & proved. There must have been an existing debt by which the ante or ante was bound as such - now, there can be no consideration then the promise of an ante to pay the debt of his testator don't bind, unless there was some debt due from the testator, tho the promise was in writing. L. Grand. 191. Cro. & 97. Boote. 206. note.

It is unnecessary in declaring an ante for a promise to pay the debt of his testator, to aver that he was agent, tho it is necessary that there be a consideration, tho it

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unnecessary that there be assent to subject him - for he is contemplated by the stat as answering out of his own ~~property~~. Suppose an extra make a contract in consideration of forbearance to sue him, he will pay the debt - this will bind him for the stat is complied with. This is another of attention to if an extra should give a note & sign it in his own name as extra, still he is to be sued in his own name & execution goes de bonis propriis. Rowlands on Fraud 208.

Now in order to take advantage of this clause of the stat is necessary, that the promisor should have been extra at the time he made the promise - versus he is not within the stat. Thus if the death of A, Bostons promise to pay the debts if they would let him take out administration - now if they permit him he is bound by the promise, for he was not ad^{tr} when he made it. Ambl. 330, Rob. 201.

2nd clause - promises made by one person to answer the debt default or miscarriage of another -

Here the great enquiry is what is a promise to answer for the debt of another - The criterion here adopted is, the distinction between what is called an original & collateral promise. An original promise will bind tho he pay - a collateral one must be in writing to bind. Ld. Ray. 1087, Corb. 227, 1 Wils. 306, Exp. D. 101.

A promise made for the benefit of a third person is not to be original 1st When the third person for whose benefit the promise is made, is not liable at all to the promisor - for if he is not liable at all there is no debt or default on his part, for not performing or discharging it.

2nd A promise to perform or pay the debt &c. of another, is original, when the liability of the latter is extinguished on the promise being made. Thus if A makes a promise for the benefit of B, B being liable, and is expressed in the cont. that when the promise is made, B shall be discharged, this is an original promise. This B. has been questioned.

3rd A promise made for one for the benefit of a third person is original, when there is a new & distinct transaction arising out of a new & distinct transaction, & moving to the promise, i. e. operating in its favour. These are the three cases of original promises, & will under the parties as much made by parol as in writing.

But on the other hand when a promise is made for the benefit of a third person, in aid or in addition to a pre-existing liability on his part, or made to procure credit for him such promise is collateral & must be in writing. It is also collateral when made to furnish additional security to the promise. 1 d. Ray 1088. 2 d. p. Mod. 200. 2 Wils. 11. 1 Do. 306. 1 H. Bl. 120. Bosc. 160. 1 Bos. & P. 158.

Now to exemplify the foregoing distinctions - 1st as to the first case of original conts. Thus A says to a merchant "deliver goods to B & I will pay you for them" - this is an original promise, & is binding the by parol. So too if he had said "deliver goods to B on my account" or "deliver goods to B & charge them to me" 2. 1 d. 11. 1 d. Ray 1088. 1 H. Bl. 120.

But if he said "deliver goods to J. D. & if he don't pay you I will" - here the promise is collateral, & to be binding must be written - to be way of additional security.

nity - but in the former case twice not so. Ed. Ray. 1886.
Consp. 227. Lath. 28. 1. 4. B. 120.

Again when a man departing on a journey sd to a baker, "^{supply} my mother supplied with bread, & I will ~~pay~~ you back" - this was holden to be a collateral promise - for the st sd twice the intention of the parties, that the mother in L. should be made debtor in the first instance. L. & H. Consp. 228. 1. 3. 4. P. 158.
Ed. Ray. 224.

Contra - Lath. 28. obiter opinion.

In a very late case it has been left to the jury to infer what the intention of the parties was, taking into consideration all the circumstances of the case. (the promise here was precisely similar to that above) the jury found for the ~~plff~~ & a new trial was granted, but not on the ground that twice illegal for the jury to infer the intention of the parties, but on a different ground. From this it seems the R is somewhat modified, & such a promise is only prima facie a collateral one. Rob. 212. 223. 1. Ber & P. 158.

Again J. S. wished to purchase goods of a merchant with whom he was unacquainted - he therefore procured T. C. to apply to the merchant for goods for him - the merchant says "I don't know J. S. - well says T. C. to him if you don't know him you know me, & I will see you paid". I suppose that now this promise, tho twice decided to be collateral, would be under the same qualification as the case is B. & P. i. e. would be only prima facie collateral - for tis in the same form as the promise in that case. L. T. R. 80.

So if I promise that in consideration you will let your house to J. S. I will see it redimmed to a

collateral promise. So too if I should promise that F.S. should pay the price. Salk. 27. C. Mod. 248. 3 Salk. 15. Holt. 2. 606.

A. G. R. is that a promise that a promise that a promise that a third person shall do an act, for not doing which the 3rd person himself would be liable, is collateral. Ed. Ray 1085.

But if the third person would not be liable, tis an original promise. Thus if I promise that if you will let me have a house F.S. will pay you 10. £ for him & if he dont I will pay the 10. £ tis original. But if I say in former case, let F.S. have your house & I will pay the hire, tis collateral - for here is a contract of bailment & F.S. was liable - the £ will imply a promise on his part, tho there was no expresson. Mr. Gilson 302. Rob. 228.

Again to make a collateral promise tis necessary that the person for whose benefit it was made, should be liable when it was made. Thus I promise if you will let me have a house F.S. will pay you 10. £ & if he dont I will - now this is an original promise F.S. not being bound to it - he was not therefore liable when I made the promise - my promise then goes with and me tho F.S. should afterwards promise to pay the 10. £ & give his note for it - for my promise relates back to the time when it was made - & then F.S. was not liable - therefore tis not collateral but original. I've sure if F.S. should in this case give a bond or higher security, it would merge the simple contract & consequently discharge me Ed. Ray 1085.

If a promise is made by one of several persons all of whom are already liable, this is not within

the stat. but is an original promise. Thus suppose two debtors are sued & costs have accrued which both are liable to pay, & that if one of the debtors informs the plaintiff that if he ~~will not~~ withdraw the suit, he will pay the cost, now this is a good promise & will bind him tho by parol. This is not a promise to pay the debt of another. Again suppose two or more are liable to pay a bill of exchange, & one promises to pay it he is bound - the promise is original. 1. Mod. 208. 2. East. 325.

The 2^d class of original promises is where the liability of the third person for whose benefit the promise was made, is extinguished by the promise being made - this is an original promise & not within the stat. Thus a promise made by one person in consideration that the promisee will discharge a debt or another, is an original promise - because he is not in aid of a continuing or subsisting liability nor is it to procure credit for him. Burr. 1888. 1. there. R. 130.

I told yesterday that this I was questioned & could not be considered as well settled. It is so in the R that the words original & collateral are not used in the stat. & indeed they are not. But I think the R is correct - for I can see no difference between it & another case that is settled. It is this - Suppose ~~the case~~ B had said to J. S. I will give you a pair of horses if you will ~~turn~~ your hand in A. - now it is settled that ^{this} is not within the stat. Rob. on F. & P. 229. 2. East. 325.

There is one case coming under this distinction, which is clearly an original promise viz - when the promisor is a purchaser of a debt or a third person, &

promises to pay the amount of the debt to the original holder, this is clearly original. Thus suppose A holds a bond on B for 100 £, & B says I will give you 100 £ for that bond, or I will pay you the amount of it if you will deliver it to me - Now this is original. It is not a promise to pay the debt of another. 1. H. R. 190. 4. East. 428. Robb. 220.

2nd class of original promises is where a promise is made upon a new consideration, arising out of a new & distinct transaction - this is an original promise & not within the rule. The leading case under this head is that of Beaper v. Wms in 3, Bur. Beaper was the lessee of J. S. & J. S. had agreed to hire his goods to Wms the deft, but the goods remained upon the leased premises, & Beaper having a right to go upon the leased premises for rent or repair, went accordingly, & the deft promised if he would not disturb the goods he would pay the rent in arrears which J. S. owed - now this was a pure promise & out of the rule, & the jct had judge. The true ground upon which the Ct decided in this case was, that the jct had a special interest in the goods - i.e. he had a lien upon them & that he sold this special interest to the deft - here remark that the lien still remained, & was notwithstanding what had been done. 3. Bur. 1866. 4. East. 428. Salk. 25. 29. 2d. Ray. 789. 4. Bp. R. 86.

A promise to pay a certain sum in consideration that the promisor will withdraw a certain sum as a stranger, for an apt & value or for any test - this is an original promise - this is not a promise to pay the debt of another - for no debt is yet incurred - the damages in actions of tort are only mere compensation. Phil. 388. 7. R. 704.

And I take it to be a R. that there must be a duty or debt to a third person, either ascertained, or capable of being ascertained at the time the promise is made. & I think this is a good criterion to determine whether the promise is original or collateral. If it can't be ascertained tis original. Rob. on Stat. & R. 208. 233.

But a promise to pay a fifth debt which I owe him, in consideration that he will stay the suit as to for the recovery of the debt is collateral. This differs from the case of Leaper & Wm. for in that case Leaper parted with his special interest. But in this case there is no abandonment of any interest merely the case of one person promising to pay the debt of another. Again tis different from the case of Clark & Reed - for in that case there was no debt or duty ascertained, nor capable of being ascertained. - but this is or may be ascertained. 2. Will. 92. 7. J. R. 211. Bur. 1787.

But suppose in the last case the promise had been in consideration of the fifth entering a retraxit, now this I suppose is an original one, tho I find no such case in the books - for the retraxit disables the fifth from ever bringing another suit for the same cause of action - and tis the same as if he had sold, burnt or destroyed the bond & I will pay you - but that is an original promise - ergo this is. 4. B. 296.

But in Bon. this is a collateral promise - for here a retraxit is no bar to a subsequent action.

I will now notice some cases which I think are tho they are not found in the books - Suppose

he promises to pay a debt due from J. S. if the latter will discharge J. S. from custody, after he has been taken on mesne process. This I conceive is a collateral promise - for the debt being discharged on mesne process does free him from a second arrest - hence tis a promise to pay the debt of another, for the debt still continues. But if J. S. was taken on execution & B should promise to pay it if A would discharge J. S. this is an original promise - for a discharge of the debt in this case is a discharge of the whole debt, & is the same as a case formerly mentioned. Rev. 2582.
1. T. R. 597. 6. Do. 925. 2. T. R. 521.

Contra. 1. Root. 57.

There has a case of this kind occurred in Bon. which had nothing to do with the stat of frauds & perjuries tho' was supposed to have. A person who had stolen goods was arrested on a process that was illegal, & this person's father promised the owner of the goods, that if he would discharge his son he would pay him the value of the goods - the son was discharged, & the father was sued - & judgment rendered in the father's favour. This decision is undoubtedly right, but the true ground is, tis compounding a felony.

Some have supposed that when there arrives a new consideration of any kind, & a parol promise is made, tis good & out of the stat, whether it moves to the promisor or promisee, & whether the original debt is extinguished or not - But this is clearly not so. says Mr. G. for the promise is collateral if the debt is not extinguished - Original promises must conform to the Act already laid down. It has often been supposed, that if there is a considera-

tion, & a promise is made, it takes it out of the
stat of T. & L. but this is not L. for would be in
peaching the stat. - this brings the L. L. before the stat
was made. A bare consideration would take a
promise out of the terms of the stat. if I would ob-
vise come within it. But the stat never sup-
plies the want of a consideration. 2. Web. 74. B. & P.
281. Robts. 232.

It has been decided in Eng. that a written prom-
ise to pay the debt of another, if the debtor don't
pay, is discharged upon the promisor's grant-
ing of assurance to the debtor. This is a promise by
way of additional security. Kirby. 397.

I would here observe that when the promise is
original the proper form of action is *indebitatus*
q. t. But when the promise is collateral & reduced
to writing the proper form of action is *special q. t.*
stating the whole case. The *indebitatus* *q. t.* is not
proper in this case - for the promisor is merely a
surety or insurer of the debt, & is not treated as
the debtor. 1. Bosc. 373. 9. Geo 3. Ld. Ray 1085. Robt. 216.

And it seems to be a G. R. that when an action is
brought on a parol promise, which is within the
stat of frauds & perjuries, a judicial confession is
made by the debt, suspending all necessity of proof
this will take it out of the stat. Peckr. Co. 15. Robt. 298.

When according to the distinction already given, the
promise must be in writing in order to be obliga-
tory, still in many cases to avoid in your death that
is in writing. The stat has introduced a new R of
~~pledge~~ ^{pledge} but has not altered the B. L. method
of pledge. Is sufficient for the pldg to show the promise.

promise in vcd - & since the same R which was good in declaring before the stat is good now. Sup pose a collateral promise made before the stat - this was good tho barred if there was a consideration. Bay. 550. B. A. P. 277. Bur. 1896. Rob. 156. 202.

This R. holds as to all cases contemplated by the stat. 12. Mod 546.

If then one sues on a collateral promise & don't al ledge it to be in writing tis good on demurrer for this amounts to an acknowledgment, that tis in writing. 1. T. R. 980. note. 12. Mod. 540. 4. Ba. 689. Comf. 289, 1. Root. 79. 2. Do. 156.

In Con. we have no settled R. on this subject.

But altho when the Pltff declares upon a promise that is within the stat, & is written, tis unnecessary to alledge that tis in writing, yet when the dftt pleads such a cont in bar to another action, he must alledge that tis written, & the reason is that more certainty is required in a plea in bar than in a declr. Thus suppose that A sues B & B pleads in bar, that he on sufficient considera tion & with consent of all parties, undertook to pay this & has tendered the money to A - now this is a collateral promise & the plea in bar is bad according to the R. - for the dftt should have pleaded that B's promise was in writing. B. A. P. 277. Bay. 550. 2. Wil. 59.

Tis necessary in all cases within the stat. that the declr alledge & shew a good & sufficient consid eration. 1. T. R. 980.

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If one part of the promise is within the stat of
4 R. 2 is all void. 7 L. R. 201. 1. Ch. R. 30. Ch. R. 420.
to 430. note. Rob. 112. note. 173. note.

This R. proceeds upon the ground, that an entire
cont. can't be apportioned.

The third class of cont. required by the stat of 5 R.
to be in writing are agreements in considera-
tion of marr. settlements - this clause don't relate to
a promise of marr. but to families settlements, or
family provisions. Ed. Ray. 486. Str. 95. B. Ch. R. 280.
1. P. W. 618. Pr. Ch. 546. 1. Rev. 6. 277.

It seems to have been formerly supposed that an
agreement by parol, that the marr. settlement a
promise should be reduced to writing, would take
it out of the stat - but tis settled vers. 1. Rev. 6. 277. 81.
Pr. Ch. 506. 2. 9. Atk. 504.

It however there is such a stipulation in, that the
parol agreement shall be put in writing, & tis pre-
vented from being done by fraud, a ct of chcy will
enforce the cont. Leg. Ca. ab. 17. Rob. 196. 198.

But tho a parol agreement by way of marr.
settlement don't bind, still tis a sufficient consid-
eration to support a settlement made afterwards
- & again a parol promise by way of settlement before
marr. is a sufficient consideration to support a
written promise made after marr. they will decree
a settlement in pursuant to this written promise.
2. Rev. 146. Str. 296. 1. Rev. Jun. 296.

A letter signed by the party to be bound is a writing within the stat. i. e. the form of the writing or instrument need be objected to - for it may be defective in other particulars. Foul. 179, 2. Vent. 361. 1. Ver. 201, 2 Do. 322, Br. Ch. 560. 9. Ath. 803, 2 Br. Ch. 92. 3 Do. 418.

But where a party depends on a letter it must appear that the party accepted its terms - & acted in contemplation of those terms in solemnizing the marr. otherwise is not binding. 2. P. W. 65, 9. Mod. 9. 1. Foul. 179. 193. 1. Forw. 6. 289.

It is also necessary that the letter furnish the terms of the agreement or contract distinctly - & this is true in all agreements whatsoever - covenants &c. Br. Ch. 560, Str. 426. 1. Ath. 72. 12. 1. Foul. 179.

The 5th class of contracts contemplated are those on the sales of lands tenements & hereditaments. It should be contracts for the sale of lands &c.

How far things annexed to the reality, as timber grafts &c. come within the stat I shall notice hereafter.

Under this clause of the stat it has been supposed that a parol agreement would bind, if it was part of the contract that it should be reduced to writing. - but this is 1. 1. Ver. 159. 1. Eq. Ca. 19. 1. P. W. 990. Br. Ch. 502. 2 Br. Ch. 558. 563.

A question has arisen in con. whether a parol

promise to pay for lands was within the stat of 1790. It has been decided that inlets aft must lie to measure the consideration of lands sold by deed. The Ct of error however afterwards reversed the decision, but they did not say that an express promise would not bind.

I think that this question has nothing to do with the stat of 1790 & that a parol promise to pay for lands sold is as binding as a promise to pay for a yard of cloath, for this promise dont affect the title of the land, & no evd ought to be introduced to contradict the deed.

Parol agreements made at the time of the deed shall never afterwards be introduced to contradict the deed. So a parol agreement to refund if the land falls short, or to pay more if it exceeds such a quantity is void & this upon the principles of the B. L. - this has nothing to do with the stat. But its however countenanced it within the stat - ^{decision} ~~there~~ I think was correct, tho their reasoning was not. Hayes v. 23.
1. Root. 77, 479. 73. Kirby. 22.

There are to this General R. under the stat of Massas & C. some exceptions, the stat notwithstanding.

A parol agreement respecting land is binding upon the party if its provable, consistent with the stat & within the Rs of evd.

There is no inherent infirmity in a parol cont. for the sale of lands - tis as good as a written one in itself & the only difficulty lies in the proof - which difficulty is introduced by the stat. This stat has introduced a new R of evd to prevent fraud thro the medium of perjury - Therefore tis sd that where there

is no danger of fraud or perjury in proving a parol agreement concerning land, tis not within the stat & of course binding. Hence tis sd that if upon a bill for the specific performance of a parol agreement respecting land, the dftt in his answer can prove the parol agreement, he is bound by it tho he plead the stat - for the object of the stat is answered & here is no danger of fraud. 1. Bow. 6. 271. 222. 1. H. 22. 441.
In. Ch. 10. 374. 9. H. 9. 1. B. 2. 600. 2. Br. Ch. 86. 1. Ambl. 180.

The foregoing doctrine or R has been much controverted. Bow says that the confession of the agreement in writing by the dftt, binds the court in writing. & of course parol evd is unnecessary. I think that this is wholly sophistical.

Whatever dispute there may be as to that, tis well settled, that if the dftt confesses in his replication, that a parol cont was made & admits to plead the stat. such parol proves binds him. 2. Br. Ch. 86. 4. H. 2. 423.
Rob. 156. 161. 1. Bow. 6. 222.

So also if the dftt expressly submits to the decree of performance he is bound by it as much as if the cont had been in writing - for he confesses the cont & dont insist on the stat - this is well settled. Rob. 156.

Now these two cases which are settled & go to establish the controlled one I have mentioned. These cases prove that a parol cont concerning land is not void - but only that the stat in many instances prevents parol proof from being admitted to guard us F&P. So that the difficulty made by the stat is only in the mode of proof. If the ptt in his bill alleges that the agreement is in writing & the dftt

don't plead the stat in answer, the plff. will win supported by parol evd. It is clear therefore in this case that if the dftt don't throw any obstacle in the way of the parol agreement, is good. Rob. 156.

The question still recurs as to the connective of the J. R. just advanced, viz. whether a parol agreement is good & binding, where there is no danger of F&P the stat notwithstanding. Thus suppose the dftt in his answer admits the parol cont & pleads the stat also - now can the stat be enforced in such a case? This seems to be an unsettled question in Eng. as there are respectable authorities both ways. Ld. Hardwick sd he would decree a performance where the dftt pleaded the stat, provided he confessed the parol cont in his answer. Now this decision went upon the ground, that if it could be shewn to the ct that there was such a parol agreement, without any danger of F&P it ought to be enforced. 1 Atk. 3. 2 Atk. 158. 2 Br. 82. 568.

Ld. Mansfield was of the same opinion as Ld. Hardwick. 1 Bl. R. 600.

Against this doctrine there has been a decision in the ct of common pleas, where it was holden by Ld. Broughborough, that a confession by the dftt of a parol agreement don't bind him, & that he may plead the stat to avoid it. 2 H. Bl. 69. 4 Br. 29. 4 Br. 82. 568. 5.

Now then are there opinions in this doctrine, Ld. Broughborough, Ld. Roslin who is the same, & Ld. C. J. Jue.

Again in another case the dftt did neither confess

nor deny the parol agreement, but plead the stat. & Ed Thurlow sd that the agreement did not bind him, & that was within the stat. He however gave this opinion on the particular circumstances of the case. For there did not appear to have been any express agreement. 2 Br. Ch. 559. 567. 8. 9.

Roberts is inclined to the opinion that the dftt is not bound if he pleads the stat, tho he confesses the agreement. Root. 160. 157. note. 238. 1. Font. 270. 176.

I think that the Ct ought to establish ^{one} of two opinions viz. either that the confession of the dftt amounts to nothing at all, or else that his confession should bind him altho he pleads the stat - for unless one of these is established, the dftt can avoid his parol agreement or not just as he pleases - which amounts to this - that ~~every~~ will compel a dftt to do an act if he pleases & not without - now this is nonsense. 1. Font 168. 170.

There is also another question which lies *verba*, viz. whether a dftt is bound in his answer to confess or deny such parol agreement. It was decided by Ed Thurlow & Ed Mansfield that he is - there are no other decisions the reverse of this. 2 Br. Ch. 565. 2. Atk. 159. 160. 4. Ker. 925. Macclesfield. P. Bury. 21. 212.

Upon an examination of the *antur* we find that in favour of the doctrine, that a confession of a parol agreement will bind tho the stat is pleaded. Ed Mansfield, Ed Thurlow, Ed Hardwick & Ed Mansfield. who are all of the opinion that the dftt is compellable either to confess or deny the parol agreement in his answer. I am clearly of this opinion. Opposed to both these opinions stand Eds Loughborough

Ed v. J. In & Ed Eldon. One of these judges opposes the doctrine as a reason why the dftt ought not to be bound, tho he confesses the parol agreement, is, that the dftt is liable to commit perjury himself in his answer. Now I consider this to be no reason at all, for truth as well applies to any case where the dftt is put upon his oath in chng. - & furthermore, the object of the stat is to prevent the pty from proving a cont by perjury, & not to prevent a dftt from avoiding a cont. I have never seen an argument on this side of the question but this which is futile.

A solution of the latter question will determine the former one. for tis clear that if he is bound to confess the parol agreement or to deny it, in such a case a subsequent plea of the stat would not avail him. Robt. 166. 1. Fort. 171.

There are a few cases in which the ct have been very liberal in taking cases out of the stat - & which are not so. It has been decided that the dftt is bound if he has confessed out of ct that there is a parol agreement. This is folly & not law. 3. Atk. 404. 1. Bow. 6. 299.

A cont for the sale of lands, i. e. lands sold at vendue, by a master of chng will bind the purchaser, tho he has entered into no written cont or agreement concerning it, because none of us does - see of perjury in proving - for the st. acts under oath & publicly. 1. Ver. 218. 221. 1. H. Bl. 229. 1. Doubl. 211. 1. Br. Ch. 945. Robt. 115.

It has been decided in Eng. that a parol agreement made between the solicitors, in a suit between a

mortgagor & mortgagee, shall be enforced upon the same principles, they being officers of it, & acting under oath. 1. Br. bk. 334.

Parol agreements are inferable frequently, concerning the title or sale of lands, from circumstantial facts - & if there is no danger of fraud or perjury in proving these facts, such parol cont. such and. I know of no judicial decision to this point but authorities are numerous. Thus you will observe is not proving the terms of the cont. but an independent collateral fact. So when an absolute deed of land is given circumstances may be adduced to shew that tis a mortgage. i. e. twice the intention of the parties that it should be reconveyed. As if A conveys land to B by an absolute deed but keeps it in possession himself, pays no rent, but pays the taxes &c. In this case A will be deemed a mortgagor on a parol agreement inferred from subsequent facts. Pow. ell. 65. 3 Wood 429. Tall. 60. 2 Lea. 71. 21 Finer. 494.

These are all obiter dicta - there has been no judicial decision on it in Eng. This precise case of a mortgage once came before our ct - the superior ct decided as I have given the R. The ct of errors reversed their decision.

Again there is another exception on the ground that a stat. made to prevent fraud, ought not to receive such a construction as would promote, or encourage it - indeed it has been found necessary to consult the spirit of the stat. When therefore one party, by not performing a parol agreement would suffer or practise ^{great} fraud on the other party, than would result by a breach of the que

ment such party is generally holden to his agreement in a ct of eqty. Rob. 141. 2. 4. 1 Bl. R. 600. 1. Bro. 6. 194. 276. 1. Font. 171. 2.

Where therefore a parcel agreement for the purchase of lands is performed or partly performed on one side, at the request or with the consent of the other party, the other party is bound—so if on a parcel agreement for the purchase of lands the vendee pays the purchase money on any part of it the vendor is compellable in a ct of eqty to convey the land, on the ground, that part execution takes it out of the stat. 1. Bl. R. 600. 1. Ver. 159. 1. Ver. 221. 2. Ver. 379. 619. 2. Atk. 100. 7. Ver. 491. 9. Do. 378. 9. Wood 593. 495. 7. Hod. 37. 1. Br. Bl. 417. 1. Bro. 8 P. 397.

The above class of exceptions proceeds upon the ground of preventing fraud— & Pow. says too, because the subsequent acts increase the improbability of hypocrisy, tho I think Pow is incorrect—

They have in one case gone so far as to enforce a parcel agreement that was partly executed when they had no proof of the precise terms of the cont. In general this want of certainty or precision in the terms of a cont is a sufficient objection to a specific performance of it—it is not however absolutely necessary to it. 1. Pow 639. 8. Vin. ab. 529. 2. Eq. Re. ab. 48.

Concerning the question what is a sufficient part performance to take a cont out of the stat, it has been decided that a delivery of posn by the vendor in pursuance of a parcel agreement, is enough on his part. 2. Ver. 363. 495. In. Bl. 318. Atk. 788. 1. Br. Bl. 709. 7. Ver. 347.

It has since been holden that taking possession in such case by the vendor, is a sufficient notice to subsequent entries of the existence of such a contract - consequently by purchasers by parol in it when they have taken possession hold in subsequent purchasers. 1 Rev. 365. 2. Do. 369. 1. Bro. & 302.

So on the other hand payment of the purchase money or of a part of it is sufficient to take it out of the stat. - but the payment of a very small part of it, would not do this - because this might be merely an evasion of the stat. 3. Atk. 2. 1. Rev. 39. 222. 1. Sent. 175.
Rob. 159. 4. Rev. 440. 3. Do. 219.

contra. 1. By. 6a. at 46. this case has since been overruled.

The payment of earnest money don't take a contract out of the stat - for this is not done in pursuance or performance of the contract - but a mere solemnity for the purpose of completing it. Rev. Ch. 560. 4. Rev. 420.

A question has been raised whether a payment of money by one party as a part performance can be proved by parol. This is I think a groundless dispute - it may clearly be proved by parol. If it was in writing it would be a note or memorandum & the stat would then be complied with. Again the payment of money is in parol, & is never expected to be complied with in any other way than by parol - & further the stat only requires the contract to be in writing - it don't mention this. 3. Atk. 2. 1. Rev. 3. 307. Rob. 159. 3.

When one party becomes bound by the partial performance of a parol contract, his representative

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on his death becomes bound also 9. Att. 2. 1. Pers. B.
309.

The act done in part execution, must be such an one as would prejudice the party claiming an execution of the agreement unless it were entirely enforced 2. Ves. J. 341. 6. Br. P. Ba. 48.

It is also necessary that the act claimed to have been done in part performance, should be such an one, as in the opinion of the Ct could not have been done, unless in contemplation of part performance. 9. Att. 2. Br. Ba. 561. 1. Att. 12. 1. Br. Bk. 412. 2. Do. 586. 1. Att. 586.

With regard to the nature & kind of acts that amount to a partial performance, the two following Rs. are the criterion.

It is a B. R. that an act merely auxiliary or introductory to a final execution of the agreement with it is never considered an act of performance within the R. - going to see the land or to consult counsel is no act of performance - & no act can be an act of performance unless it is strictly in performance of some part of the agreement 1. Port. 175. 6. Br. P. Ba. 45. 1. Br. Bk. 412. 9. Ves. J. 374. 379. 6. Do. 41.

On a cont. in consideration of money

Mass. is not as between the parties, such a part of performance, as will take the cont. out of the real - because a money settlement agreement never is

to take place, unless the man is remunerated - & if
man then were a part performance, the debt
would be a debt litter. R. th. 561. Ste. 738. 1 P. W. 617.
Rob 176. 8.

A part of cost. by a third person in consideration
of the man of A & B is taken out of the debt. if
the man takes place by the consent of the third
person, or the third person could prosecute fraud
on A & B - for they are not guilty in not hav-
ing the cost put in writing before man, be-
cause they are not the parties in the debt. 1. R. 373.
1. R. 201. 1. R. 277. 8. 202

When a woman having a portion by her first
man enters into a part agreement with
her second H. that this portion should go to trustee
for her separate use, an action was brought for
performance, & the court was enforced on account
of the deed which implied on the debt side a
part performance. - Bro. assigns another reason.
1. R. 8. 304. 1. R. 277.

Butting down further there has been deemed a part
performance. 2. R. 6. 28. 28. 27.

R. as to part performance similar to the
English. old. 1. Dyer. bar. 220. Hing. 992.

Tham pointed out two exceptions. to the debt. 1st
when there is no danger of fraud & perjury &
2nd part performance. Again a written agree-
ment respecting lands &c may be contradicted,
by proving a part agreement if there was given
in the written agreement. 2. Atk. 378. 1 P. W. 620. 1. Fort.
618. 187. 2. Atk. 204. 1. R. 6. 28. 28. 27.

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If A agrees to execute a deed in B of Blackacre & my fraud substitutes one for Whiteacre, parol proof may be admitted always at trial to prove the truth - & at L. too Mr. J. thinks in *per se* non est factum. A parol ~~in~~ agreement may always be proved when the written one furnishes an inducement to fraud.

The ground on which parol agreements are refused to be proved in law is because the action here is not brought on contract but ~~on~~ trespass on the case, for fraud to which the contract was merely an instrument. 2. Day 531.

When there is a mistake in the written instrument, as this is not the act & deed of the parties parol ~~and~~ may be introduced to show what the truth is. As where a wrong sum was inserted, or a wrong name.

But this is not so in case of a mistake in the application of L. As if A executes a deed to B & his heirs, intending to convey only a life estate.

A mistake in the execution is one in the actual contents of the instrument then executed - viz. in the words used - & relief extends no farther except in the schoolmaster case - there however the mistake was not as to the legal operation of the instrument, but as to the title - But I think this case is not L. tho it has not been judicially denied. 6 L. R. 671, 1. Vespy. 552, 2. Atk. 209, 3. Do. 389, 4. Ves. 376.

A written agreement respecting lands or any other thing, may sometimes be controlled by a parol

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agreement for the purpose of rebutting an eqty — then A agrees to sell land to B. this agreement is part in writing — afterwards A agrees to take less than the sum specified in the writing — a parol evd may be introduced to rebut the eqty. To rebut an eqty is to rebut a claim merely equitable — this does not contradict the stat or. & S. The stat says no action will lie on such a parol agreement. It does not say that it can't be introduced to rebut an eqty. This takes place only in ch. 9. Sec. 299, 1. Ver 240.

But the stat 2. Geo. 2nd an action of indec. aft will lie for the use & occupation of lands on a parol agreement — but this does not interfere with the stat of F&S — this action lies in some cases in bar. tho we have no stat. Exp. D. 20. 165. 2. Bl. R. 1259. 1. T. R. 378. 1. Wils. 914. 1. H. Bl. 295.

Aft of the land must be with the consent of the owner — in such case there must be a cont either express or implied. 1. T. R. 378.

At o. & S. aft will not lie to recover the rent of land, but debt will lie upon a parol lease at B. & S. for the debt is a higher remedy. Hutt. 84. Doug. 235. Exp. D. 20.

In bar a parol agreement does not create a tenancy at will, nor a tenancy from year to year — tis a mere license & will excuse a trespass — but it does prevent the cont from being enforced if there is no danger of fraud & perjury. This subject to the R. above laid down, on the stat of F&S.

contracts of the path kind are those not to be performed within a year from the time of making.

This clause is somewhat similar to the rule of limitations - the not similar as it does not limit the time in which the action is to be brought.

It is held that this clause does not extend to any agreement respecting lands, tenements & hereditaments - because the preceding clause has made all the promises intended to be made, as to contracts of this kind. I consider a parol contract of this kind completed or partly executed, binding. 1. Booth. 81. 1. Bov. 276. 1. Per. 152. 8. 1. R. 927.

When the performance is to take place on a contingent event, which may or may not happen within a year, the contract is not within the statute. 1. Salk. 280. Bul. 280. Str. 506. Ed. Ray. 316. 679. Bur. 1278. 1288. 3. Per. 1. Holt. 326. Skin. 939. B. & P. 280.

A promise to give a sum on the event of a marriage, or to acquit a sum by will. Bul. 280. Bur. 1278. 1288.

It is unnecessary that the contingency should actually happen within a year - for the contract is good or bad ab initio. Ed. Ray. 317. Bur. 1281. B. & P. 280.

This clause extends only to contracts which by their express terms are not to be performed within a year. Bur. 1281.

And even here it seems that when the promise is made on a contingency, & becoming consideration, is good if it is to be performed within a year from the time when the consideration is

omitted. As where A promised to pay B \$100.00
five years hence for binding his son - this was bind-
ing. 1. Root. 89

Rules applying to all the kinds of contracts con-
templated by the Stat.

The construction of the stat is the same in every
as at L. The remedy may be different, as they
may differ as to of L. often differ in the construc-
tion of a stat. 1. Be B. 600. 1. Font. 22. 3. Bl. 6. 430.

The intention of the legislature always governs in
the construction of stats - construction is merely a
process by which the intention is discovered,
1. Pow. 179.

It is often asked what is a note or memoran-
dum in writing. I suppose ^{it is} for to no where laid
down in the books) any writing which is intend-
ed to furnish evidence of the cont. Hence twice decided
by Ld Hardwick, that a letter written to an agent
was sufficient. 3. Atk. 503. Robt. 121.

If the letter is written by one party to a note.
1. Pow. 287. 1. Font. 179. 2. Br Bk. 32.

The letter however must distinctly furnish the
terms of the cont or to not binding. 2. Dq. 6a. at 17.
3. Br. Bk. 918. 1. Per. 221. 2. Do. 322. Br Bk 560. Str 526.
1. Atk 12. 1. Pow. 270.

If however the before terms can be made certain
by a reference to any other document or extrinsic

What is signing? Not only a mere mention of the name in the usual form, and the name of party bound is written in any part, & intended to give authenticity to it, is a sufficient signing within the stat. 1 Port. 103. 1 Ves. 6 1 Eq. Cas. ab. 92. & Atk. 503.

The name here must be inserted in the party himself & not in the witness - & it must be intended too, to give it authenticity & form for no other purpose. 1 Port. 161. 7. 1. Bow. 6 255, 1 P. W. 771.

A party's making alteration in a draft with his own hand was formerly deemed a sufficient signing - but is now deemed I think improperly because the signing & drawing of an instrument are two distinct things. 1 Ves. 221, 1 Port. 165, 1 P. W. 770.

It is well settled that the subscribing an instrument as a subscribing witness, is a sufficient signing to bind the witness, for any stipulation in the instrument relating to him - because the witness is supposed to know & read & adopt the agreement, by placing his name to it. Rob. 129. 4, 1 Ves. 6. 1. Will. 318, 1 Bow. 6. 284.

It is sufficient if the parties to be bound by the agreement has signed if the other party has not - tho the other party must acquiesce in the agreement previously. 7. Ves. 426. 2. 1 Ves. 373. 2. Br. Ch. 8. 65. 1. Eq. Ca. ab. 92. 2. Do. 92.

When A procures B to sign A is also bound - the reason is, because A procuring B to sign makes the signing as authorised by A. Mr. J. thinks this reasoning too refined - this case is not like that of an agent, because B don't act for another. 1 Bow. 6

287. 1. Eq. 60. ab. 21.

If that party not signing bring a bill in the other, for a specific performance, he is then doubtless bound. because the bill being signed by him self, in truth confesses the rule. 1. Bos. 32. Rob. 125.

An auctioneer signing a printed condition for the sale of goods & chattels is held to be sufficient as agreed with parties. Bos. 122. 1. 36. 2. 522. 2. 426.

But even when the auctioneer annexed the name of the purchaser to the printed conditions when the article sold was
two silver bowls
the purchaser, &c. 1. 2. 109.

It is now settled, that the auctioneer signs as agent when the articles are goods & chattels but not when they are bonds, judgments & remedies, or any interest in or concerning them. This distinction I think is necessary, 1. Bos. 107. 1. 300 & 1. 306. 1. Bos. 1344. 2. 252. Rob. 115.

It has been doubted whether a sale at auction was ever contemplated by stat.

A printed name may be a sufficient negation tho the stat says the parties must sign. this is a rational construction. 1. Bos. 8. 238.

The duty of an agent who signs for another need not be in writing, tho the a. l. is different in other cases. but here we only want to answer the requisitions of the stat. Winn v. lib. conts 11. 45. 3. Wood. 427. 4. Bos. 125. 256.

It is unnecessary that the identical contract on which the suit is brought should be signed - because the stat says some writing note or memorandum of the contract signed is sufficient to ground an action on; a sufficient agreement. 9. 3. Ch. 91. Rob. 121. 9. Att. 509.

The writing merely of an agreement with one's own hand, is not now the law formerly, seemed a sufficient signing. 1. O. W. 170. Rob. 121.

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bailment is a delivery of goods upon a contract express or implied, that they shall be restored to the bailor when the purpose for which they were delivered is answered, or shall be dealt by according to the bailor's direction. Jones 9. 48. 2. 2d. 6481.

The person who delivers goods is called the bailor - the person who receives them the bailee.

In bailt the decisions appear generally to have conformed to the true principle - but opinions & data are very various. The decisions of Lord Holt in the case of Coggs & Bannard & the treatise of Sir Wm Jones seem to be the only sources of knowledge on this subject. Ed. Anst. 915. 115.

Every bailt vests a qualified property in the bailee - i.e. a right superior to all other rights except the owners - & this I perceive because Lord Holt says pawners have a special property & that other bailees have none. A lawful possessor gives a qualified property - The pawnor has a stronger interest than others to be sure - is a settled principle that a common carrier owes a lien upon the property of the bailor till he receives his pay. To be sure when the bailment is such that it may be countermanded at pleasure, the bailor has no property as it relates to the bailee, but he has it to all the rest of the world. They are gradually settled that the power of goods may maintain trover in any person that takes them away, and yet property is essential to trover. Consequently Lord Coke's assertion is neither a foundation.

4. 60. 89. 1. Inst. 89.

is a question of fact which the finder has. 1. Bu. 250.
Jones 112. Str 105. 30 L. 7. 5 R. 372.7.

From the nature & obligations of bailment it follows, that the bailee must not only keep the goods, but that he must keep them safely for the specified time - & that he is liable for any loss or damage that happens to them during the bailment, tho' not at all events for a G. & that he is not liable for any loss or damage that did not happen thro' any fault of his own - to determine whether there is any fault in the bailee, we must consider, 1st the nature of bailment, 2nd the quality of the thing bailed & 3rd the conduct of the bailee.

We are to consider the nature of bailment because one thing requires greater care than another - & the nature of bailment may make a difference, when the subject is the same. Thus goods of one kind may be left in a field but not jewels. So the value & quality may make a difference.

To ascertain the degree of diligence required is more difficult than any thing else in bailment. To ascertain the different degrees of diligence required by the several bailees, we will attend to the following R.s. which are founded on the nature of bailment.

1st The most G. R. is the bailee is bound to keep or to use if delivered to be used, the goods, with a degree of care proportioned to the bailment, according to all the circumstances of the case.

Jones 8.

In some cases more than ordinary care is required - in some, less is sufficient. In order to under-

stand this. We must define the different degrees of care & neglect.

Ordinary diligence then is that which rational men in general use in taking care of their property. Jones 3.16.

The different degrees on each side of this standard are not precisely ascertained. Much is left to the sound judgment & discretion of a jury. To every degree of ordinary care there is a corresponding degree of neglect, or default - thus the omission of ordinary care is called ordinary neglect - Jones 11.213.31.

Now the omission of the care which very attentive & diligent men use is called slight neglect. Jones 13.91.

And the omission of the care which even careless & inattentive men take, is called gross neglect. Jones 11.30.

Gross neglect is evidence of fraud in the bailor - tho this is not universally true. If the bailor loses his own goods precisely of the same kind in exactly the same way, this circumstance rebuts the idea of fraud. A violation of good faith is in L. synonymous with fraud - is sometimes called *mau fides*. Id. Ray 115. Jones 30.63.68.

Gross negligence is still however *prima facie* evidence of fraud. There is no more in it. There are not all the degrees of care & neglect. To apply these observations, attend to the following Rs.

1st When the bailment is for the benefit of the bailor only, nothing more is required than the good faith of the bailee, i.e. he is liable for only gross neglect - which amounts to a

violation of good faith. As in case of goods kept gratuitously for another. 4 Co. 89.^b Jones. 15. 16. 21. 22. 92. 51. 58. 64. 65. 101. 1. Per b. 247. Ed. Ray. 95.

There is however an exception to this b. R. when the bailor makes himself liable for ^{if} there gross neglect, by special agreement - for he may insure all casualties. There being no special agreement the R. applies. Ed. Ray. 92. Jones. 22. 23.

2nd When the bailee only is benefited, he is liable for even slight neglect. i. e. he is bound to use more than ordinary care Qui sentit commodum sentit debet onus is the axiom of justice on this subject as in the case of a gratuitous loan. Jones. 15. 16. 89. 89. 90. 91.

3rd When the bailment is advantageous to both parties when the obligation hangs in equilibrium, only ordinary diligence is required, i. e. he is liable for only ordinary neglect. As when cloaths is left with a tailor to make. There is an from the Roman L. Jones. 14. 101. 108.

Different kinds of Bailment.

According to b. L. there are 6 kinds.

1st This species of bailment is called a depositum in b. latin, or a deposit. This is a delivery of goods to the bailee, to be kept by him for the use of the bailor without reward. This is called naked bailment & the bailee is called depositary or naked bailee. b. p. 618. Ed. Ray. 92. 93. B. N. 72.

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2nd This kind is called *commodatum* - & is a gratuitous loan of goods that are useful to be used by the bailee, & to be returned by him in as safe as when one borrows a horse to ride without him. Ed. Ray. 918. 919. Pow. 6 249.

The bailor is in this case called the lender & the bailee the borrower. This is called a loan for use. There is a distinction between this kind & that which in L. is called *mutuum*. A *mutuum* is not strictly a bail for use but a loan for consumption. So the specific thing could be restored with merely an equal quantity of the same kind. Thus if one lends a barrel of flour tis a *mutuum*.

It follows from this distinction that in the case of a *mutuum* the absolute title is transferred - & the transferee is liable for any loss that may happen. But if a horse is loaned to some, Pow. 89. 90. Dr. & St. 129. 1. Ba. 251.

3rd This kind is called *locatio*, or *locationis conductio rei*. Tis a delivery of goods to the bailee for him or servant to send to the bailor. Here the bailor is called the vendor or locator, & the bailee the hirer or conductor.

Sir. Wm Jones classes as a subdivision under the 3rd kind - but I think improperly - he places it there in as much as tis used for the benefit of the bailee. Ed. Ray. 918. B. N. P. 92. Jones. 50. 117.

4th This is called *vadum* or *pignori acceptum* in Latin - in English a pawn - tis a delivery of goods as a security of a debt due from the bailor to the bailee. Jones. 104. Ed. Ray. 919.

5th This is Locatio operis mercium vehendarum or locatio operis faciendi. Is a delivery of goods to be carried by the bailee, or some act to be done about or with them for the bailor, & for a reward to be paid to the bailee. In the third kind the act is done for the bailee. When they are carried, tis called locatio operis mercium &c - but when any thing is to be done, locatio operis faciendi.

This kind is ranked the delivery of a cargo or freight to be carried to another place - so of any goods to be carried in any way. So too to a mechanic to have labour performed.

This shews that this kind dont come under the third as isd by Jones - for in the third the bailee pays the bailor - but ~~the~~ⁱⁿ the reverse. Both more carriers, and workmen rank under this class. Ed. Ray. 913, 919

6th

This is called mandatum - a mandate - tis a delivery of goods to another to do something with or to keep without a reward - In the 5th kind a reward is given - in this there is not. The bailee is commonly called the mandatary. Jones makes but 5 kinds - that tis unnecessary to mention. Jones. 50. 75.

I think the division ought to be such as to bring under one class all whose duties or rights are the same. As the third fourth & part of the fifth, where a private person does the work.

We will now treat of the kinds particularly.

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1st Depositum or naked bailt. The bailor here is only liable for gross neglect - & that is prima facie evd of fraud - & he is liable on the ground of fraud. This is a delivery of goods to the bailor to be kept for the bailor, without any reward - the bailor is called a depositary, Ed. Ray 907. 915. Sto. 1099. Jones. 32. 64. 65. 1. Bow. 2. 247.

Sona says ordinary care will discharge a man i.e. the bailor, from all liability - but Mr. G. says that ~~then~~ ordinary care will discharge him. 1 H. Bl. 152. 13. B. N. 172. 12. Mod. 487.

Mr. G. says he is liable only on the ground of fraud - & of course if in gross neglect it can be proved that there was no fraud the bailor is not liable. If he treats his own goods as he does those of the bailee, gross neglect is no evd of fraud. Ed. Ray 852. 915. Bur. 2300.

So if he is a drunken fellow & sleeps with his door open thus exposing his own goods too. I have seen no express stipulation limiting or extending his liability.

Perhaps on principle there is another exception viz. when the bailt is in consequence of the officiousness of the bailor. But the acceptance is general & in consequence of this officiousness he is prevented from trusting them with a person of integrity - Jones. 66. 7. Ed. Ray 655. 911. 913. Reeves Hist. L. 245. 6. 394.

Some of the old rules seem to be opposed to this. The case of Southcote is opposed in some respects. In that case the bailor brought an action on

the bailee for goods bailed - the dftt pleaded that they were stolen - which was adjudged in demurrer to be insufficient - Mr. J. thinks the decision correct - for by accepting the goods he became liable in all ordinary cases - But the plea was ill for another reason - It merely states that they were stolen - & the theft might have taken place with his consent, or thro his default. 4 B. & C. 89. 6 B. & C. 815.

But tho this decision in 4 B. & C. 89. is correct, yet the doctrine advance obiter is opposed to the case of *Goggs & Barnard* in *Ed. Ray* & to all modern authorities & opinions. *Ed. Ray*. 655. W. note. 913. 914. *Str*. 1099. *Com. R.* 197. *B. N. P.* 72.

Sometimes there was a distinction between special acceptance to keep safely with, & one without a valuable consideration - now. It seems then that a delivery of goods is a sufficient consideration to support a promise wherever expressed & to imply one where it is not expressed. It has been holden that where goods are left with a depository, & the owner keeps the key of the chest in which they are placed, the bailee is liable only for the loss of the chest - this opinion was merely obiter.

The truth is neither *Boke* nor *Holt* have a distinction between cases in which the bailee was & was not ignorant of the contents - yet this seems to be the criterion. When he receives a chest knowing it to contain goods, he voluntarily takes into his charge the goods, as well as the chest, whether he has the key or not. he certainly does the same today. *Holt* says he is bound to keep both at any

rate - this however is not L.

He must know the contents to be subjected. The subject of bailt has not been understood till lately

The errors in the case 83^d bade are very numerous. Holt had the general outlines of the subject very correctly, having taken them from Bracton who took them from the Roman L.

The truth is if the bailer was ignorant of the contents of the chest, he would be liable for the chest only - for he ought to know the contents to know what degree of care to use. 2 Co. 89, 2 Ed. Ray. 912. Jones 51. 800.

I think he ought not to be liable for the content unless he has been guilty of gross neglect as to the chest, & certainly not unless he is acquainted with the contents of the chest - especially not to the bailor who has by fraud or latches concealed the fact.

The L. cant imply a promise to keep goods safe, when the existence of such goods is unknown to the supposed promisor - & when the means of information are taken from him.

Again at most this is no more than a contract of insurance - for he only promises to keep them safely - under the L. of insurance he would not be liable - for if the statement to the insurer is not, explicit & correct, he is not liable for the loss. 11 T. R. 709 et 5.

The bailer may exclude his liability by express

liberation

A promise by the deponitory to keep the goods safely does not subject him at all events. It does in case of loss by the act of God - for *actus dei neminem facit injuriam* - nor in case of inevitable accident.

Again he is not liable for the acts of wrong doers provided he is not in fault - as in case of robbery. It is not so as to theft - for this is a careless act, & supposes neglect as which common prudence would have guarded. Jones. 62, 775. Ed. Ray 25. Dr. & H. 190. 1. Pow. 294. 9. Holt. 34.

If however he should be guilty of any fault or negligence in exposing the goods, & thus afford a temptation to the commission of robbery, he would doubtless be liable.

This is analogous to a warranty made by the depositor - the covenant is for peaceable possession - yet this is not a covenant as trespassers - for they are wrong doers - & this does not extend to mere acts of wrong doers.

If the deponitory refuses to deliver the goods after they are demanded, or in any way converts them to his own use, he is liable in an action of detinue or trover, or indeed in any action on the promise. As to trover & perhaps detinue being in this case concurrent. 1. Barn. 220. 1. Roll. 128. Eves. 721.

An unlawful detinue after demand made is conversion.

is not that where the article bailed is expensive, keeping, the depository may use it to defray the expense - instance a horse. Jones. 11.

2nd Commodatum. This is called in English a gratuitous loan or lending. It is a delivery of goods to the bailee of goods for his use & benefit solely to be returned specifically to the bailor.

This bailee must use more than ordinary diligence & is liable for less than ordinary neglect. If he borrows a horse & puts him in a stable leaving the door unlocked - & he is stolen, the bailee is liable.

1. Ba. 244. 1. Ro. 247. 10. Ld. Ray. 116. B. & P. 72.

Generally a borrower is liable for theft, unless he can prove he used extraordinary care - i.e. he is *prima facie* liable. The owner proinde rests on him Jones 9. 2.

The borrower is not generally liable for such acts of force as he can't resist - never indeed, unless there is some want of care or prudence on his part. Ld. Ray 116. Jones. 98. 1. Ba. 241.

He is not liable for inevitable accidents or *vis major*. Yet I think he may make himself liable for them - & so too of all other bailees. As if he is guilty of a previous breach of trust - thus if he should attempt to crop a sower in a very dangerous time with a bailed horse - here the loss was occasioned by his own neglect. So too if he borrows a horse to go to one place & he goes to another - the moment he proceeds on such

forwards the wrong place, & is a wrong doer & doubtless
 left an action would lie in him - tho as the case might
 be the damages would be nominal.

This R is laid down as to the two kinds of bailment.
 but I know not where it does apply to all - So too if
 he detains him longer than the time he is bailed
 for, & the horse is destroyed I think he would be
 liable. Ed. Ray 118. 717 Jones 286. 1. Ba. 244. 297. 3. Bro. J.
244. 1. Pow. 4. 249. 259.

3rd Locatio or Conductio - sending or hiring - this is
 when goods are hired to the bailee for his use, for
 a reward to be paid, the bailor.

Here the bailee gains a qualified duty as in other cases
 & the bailor an absolute right to be paid. Jones 119.
Ed. Ray 719.

Here, as both are stipulated, he is bound to only ordina-
 ry diligence. It is so by Ed. Holt in the case of Woods &
Barnard that he is bound to the utmost diligence
 & consequently is liable for slight neglect - which is
 the same as in gratuitous bailt. This is in the com-
 mon sense of mankind. 1. Pow. 251.

The terms "utmost diligence", ordinary diligence &c
 when this case was decided seem to have been used
 without any definitive meaning. Ed. Ray. 716.

Ed. Holt himself makes a distinction between a bailed
 liability, & that of borrowing - for he says the bailed is
 excusable in case of theft - but he says a borrower of
 money is prima facie liable for theft - this distinc-

tion however could not exist if his doctrine were correct. Ed. Ray. 116.

A hirer may or may not, as the case may be, be excused for theft. Jones has traced this distinction of Hols. to its source - he got it from Bracton, & he uses the word in the superlative degree when he means the positive. Thus *levissima culpa* is translated a slight neglect. Altho Bracton uses the word he is the only Roman writer who uses the superlative - Hols. opinion is not *h. tria dictum*. Ed. Ray. 116.

A hirer is regularly excused in case of robbery - even if occasioned by imprudence & want of ordinary care. When a horse is hired, the hirer is liable if he is stolen in consequence of not locking the stable door.

As this is the most common kind of bailment there is less to be said on it than on any other. Mr. G. thinks the *lex loci* should govern. Jones. 141.

It has been made a question whether the bailee of a chattel let, is not bound to keep it in repair during the bailment - it is decided that he is not. 1. Russ. 321. Doug. 720. 1 Ba. 521.

4th Pawn or Pledge - *Pignus* or *pignori acceptum* - this is a security for debt - It is necessary to premise that bailment is used to denote the delivery of the thing - yet it is sometimes used to denote the thing delivered. In pawn, the thing pledged is *pled*. This substantially the same as a mortgage, & the general principles in both cases are the same. 9. Com. 223. Ed. Ray. 91. 1 Ba. 237.

The maxim once a mortgage always a mortgage

applies mutatis mutandis to this case - once a pawn always a pawn. By this is meant that no collateral agreement not to redeem is binding - i.e. no collateral agreement that on a certain event taking place, the conveyance shall be considered absolute shall make it cease to be a pawn.

It has been decided lately that when the delivery was by absolute bill of sale, yet if truly intended as a mere security, the vendor shall always have all the right of a pawnor, altho the instrument of conveyance provided, that if payment was not made by a certain day, it should be considered as a sale. 1 H. Bl. 114.

This bailt is advantageous to both parties - to one as a security for his money & to the other, since by it he obtains or at least prolongs credit. Hence the bailee is bound to only ordinary care - & of course is liable only for ordinary neglect. Salk. 529, Ed. Ray. 117, 1 Br. 252, Jones. 105.

His holden in Southcot's case, took, that the pawnee is bound to keep the goods only as his own are kept & that in this he differs from other pawneers - At this case stands his not now so. The reason he gives for it is, that the bailee has a puty in the goods; but this don't support the distinction - for every bailee has a special puty in the goods. Co. Litt. 69^a
4 Co. 89^b

He is not bound in case of Robbery - unless he voluntarily exposes the goods. Ed. Ray. 116, Salk. 522, Jones. 107, 109, 111.

His sd in Southcot's case that if the goods are

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stolen he is not liable. But surely this is not so for theft in some cases may arise from gross neglect on his part. Jones says unconditionally in all cases, if he suffers the goods to be stolen he is liable - he don't use ordinary care & the theft is proof of it. This is as indefensible as Holts - careful men lose goods by theft as well as negligent ones. Whether ordinary care was used or not ought under all circumstances to be left to the jury. The reason given is not agreeable to fact. Jones says the borrower is liable in case of theft unless he can shew that extraordinary care was used - hence he thinks it may happen extraordinary care notwithstanding. The A.s are inconsistent & the former is L. Jones 106. 107. 92. 112. 3. Salk 522. 268. Ld. Ray. 917. 8.

The pawnor's qualified property in the thing pawned is determined by pay^t or tender on the 1st day. & the pawnor's interest reverts - 1. Ba. 237. Salk. 522. 529. 2. Co. 89^b Jones. 111. Ld. Ray. 916. 7. Bro. & 244. Exp. D. 625. 1. Bow. 259. B. N. P. 72.

Consequently if the pawnor after pay^t or tender on the day of pay^t, retains the pawn he is liable to any loss that may accrue & he is a wrongdoer. An action of trover or one on the promise will lie in him they being concurrent. So also if a S. of the pawnor refuses while acting as a S. an action lies in the same manner. Trover may be brought the original taking was lawful - 1. Ba. 237. 8. B. N. P. 72. Salk. 521. 1. Com. 220. Bro. & 244.

There is one A. of pawn different from any species of bailt. If the pawnor refuses to deliver up the pawn after pay^t or tender, he is at L. indictable for the

offence - because till the pawn was delivered in ~~secret~~ secret.

Another reason is, the pawn might be used for purposes of oppression, the pawnee being always ~~at~~ & the pawnor ~~at~~. The other reason has weight - for men are apt to make a secret of their circumstances when embarrassed - which observation does apply to any other kind of bailment. At 6. I. there could be no secret for a pecuniary is required for the purpose of notoriety, in all mortgages. 1. Ro. 240. bank. 287. Hawk. 240. Salk. 122. 277. 4. Com. 254.

Your remarks that Butler observes that after the tender to the pawnor becomes depositary of the pawnor. Mr. B. says he could find this principle laid down by Butler & at any rate it went in L. J. 11. R. A. B. 72

When the money is tendered & the pawnee refuses to accept it, the pawnor then becomes depositary of the money for the pawnee - & the pawnee has a right to the money & is liable for the loss of it by gross neglect. If he ~~does~~ keep it his lender will avail him nothing. In pledg the tender is necessary to add that you always have been ready, tantum pro pro & still are ready uncompromised to discharge it. 1. Ro. 244. 1. Ro. 297. 8.

In some cases the pawnee has a right to use the pledge & in some he has not - When he has a right to use it tis founded upon the presumed consent of the pawnor, where there is no express consent - & this consent is presumed or not, as the pledge is likely to be made better or worse, or not at all affected by the use. So.

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jewel thinks he are not injured by the use
yet he does he uses them at his peril & ordin-
ary cases would excuse him. Mr. G. thinks they are
insured us use at least he doubts the opinion
that they are not. This he now seems to be a very
strong case since the consent of the pawnor is
presumed. The right in case of the jewel is
founded on a presumption of indulgence. Salk. 525.
1 Inst. 39. Ed. Ray. 917. B. N. P. 72. 1 Ba. 237.

If the pawnor is at expense in keeping the pledge he
may reimburse himself, by using it - and how
I see no necessity to presume consent here - is clearly
a matter of justice. Yet there ought to be some
limits to this right - I should say he ought to use
him only till he is reimbursed, Exp. D. 625. Jones.
112. 3. 4.

If then the pledge will not be any worse for the
use he may use it at his peril - except if he is
injured by use. So if a grained pledge is worse one
moment, the pawnor is liable in an action of
trover - for the act amounts to a nuisance - and in
case of a milch cow, the pawnor is bound to
milk her - because she would grow worse by
not milking. Ed. Ray. 917. Jones. 119. 1. 60m. 221. 5. Ba.
257. 266. B. N. P. 72.

We will now consider goods found. Ed. Holt ob-
serves in the case of Barnard & Logg, that the dis-
tinctions that obtain in the case of pawn, exist in
the case of goods found. Mr. G. thinks he means
this - that the same degree of diligence is requi-
red in the pawnor as in the finder viz. or-
dinary - which is undoubtedly true. It has been
however held that the finder is not bound to keep the

proof safe & is not liable for ordinary negligence. The decision in this case is undoubtedly correct. The law governing is not, however, was brought for mere nonfeasance. Bro. E. 212. Id. Ray 117. 1. Dow. 8. 252. Exp. D. 599.

Holt & Br. with say that the finder is not bound to an ordinary care, the dictum in Bro. E. to the contrary, notwithstanding.

In one point of view it would seem he ought to be liable for gross neglect only, since the bail is beneficial only to the owner, the finder being entitled to no reward.

There is however a difference between a finder & a bailee. The owner chooses his bailee & if he suffers a loss, as does his own fault, for he ought to have secured himself either by the character of the bailee or by security. A finder is not strictly a bailee, for there is no delivery of goods to him. If he takes the goods then he ought to keep them infer. Id. Ray 117. Exp. D. 599. 1. Dow. 8. 252. 2. 60. 146. Bur. 2127. Holt. 281. Ash. 658.

In this & in most of the U. S. the L. is settled by stat. that the finder has a lien upon the thing until the expense is discharged.

The bailor or owner properly the quasi bailee being beneficial to both parties. the finder is doubtless bound to an ordinary care

The finder is liable in an action of trover after a demand is made & reasonable evidence of ownership adduced altho his own expenses are not paid or

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or even delivered. The finder has no lien upon the goods at B. L. for his trouble & expense. Id. R. 1117, Ltr. 691. Exp. D. 548.

The case of salvage is different from this, being dependant upon the principles of the B. M. Id. Ray. 999. 5. Ba. 270. 2. H. Bl. 254.

Can a finder maintain an action for this expense in Eng? Mr. J. Knows no principle of the B. L. by which he can. He has indeed done a neighbouring act - but a voluntary courtesy is not the ground for an action - If an action will lie it is on tort or contract - tort is out of the question, so nothing is done. No action by the B. L. lies for a voluntary courtesy.

Again no action founded on contract will lie - for one person has no right by his own act to subject another without his consent, even by the B. M. except in case of negotiable instruments.

To be sure when a person has done what he is compellable to do for another an action will lie - as where the security pays the debt of the principal. But here is no privity of contract. As the parties are total strangers to each other, to imply a contract or an assent & also a special request would be going too far. 2. H. Bl. 254. Hob. 106. Exp. D. 57. 9.

A refusal by the finder to redeliver the goods is not per se a conversion. It is merely prima facie evidence of a conversion - this evidence may be rebutted. A conversion is an assuming to treat the goods of another person as if they were his own.

The finder is not bound to deliver them up until reasonable evd. of ownership is furnished, for he is not deemed to know the owner. If he delivers them without such evd. he does it at his peril. Nay if he delivers them voluntarily with such evd. he is still liable to the owner - consequently tis his duty to refuse to deliver them till such evd. is produced, as would satisfy a jury of ownership. Exp. 590. 2. Bul. 312.

This reasoning however dont apply in strict bailt. The bailee of goods knows who the bailor is.

This case of a finder has led to a much disputed question in this state tho tis now settled. viz. A finds the goods of B - & claims them - A refuses to deliver them - he then brings an action of trover as A & by false testimony recovers them - afterwards B claimed them of A who refused to satisfy him - B then brought trover as A - A plead in bar a former recovery - still the court gave judgt for B. 1. Root. 545.

The question is the first judgt a bar to the second. I know of no decision precisely in point - yet from analogous cases I should suppose, that it was. If a man produces forged letters of administration, & upon request the debtors pay him the debts, they do it at their peril - for they do it voluntarily - consequently they may be compelled to pay them again to the real admr. - Thus if they are sued & a recovery had - for tis a R of L. that when a man is compelled to pay a sum of money by a process of L. to a wrong person he shall not be compelled to pay it again - tho if he had paid it voluntarily he might.

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In case of a paie payable to a mill, paie takes place by process & compulsion of l. and in this case the paie cannot compel a second paie. Suppose a paie is made to a bankrupt by a process of l. who has debts in another court, he goes thither prosecutes & recovers there in his own name. This is a bar to another action for the same debt by the assignees. tho the paie was thence. 4. C. 12. 145. 2. Ba. 11. 1. H. B. 669. 684. Doug. 161. Cooke. Bankr. 6. 370. 2. H. B. 408.

If perishable goods are pawned as security for debts & decay, the pawnor may receive his debt tho the security has ceased. seeu formerly, 4. Com. 258.

The same is true as to a ransom bill under the l. of nations. If a hostage was given at the same time & the hostage dies, an action lies on the bill. 4. Ba. 298. 1. Inst. 209. Salk 209. Doug. 617. Bur. 1794. 1. B. 569.

So too while a pawn remains in the hands of the pawnor he may bring an action & recover as of common right unless he has deprived himself of this right by special agreement. Str. 419. Ex. 86. Yel. 179. 2. Lev. 116. 2. W. 691. 4.

But if paie of debt is not made at the l. & the pawn becomes absolutely the pawnor's tho the pawnor has still an equity of redemption. 1. Ba. 298. 1. Inst. 209. 1. W. 691. 4.

If the pawn is lost thro the previous fault, or thro the omission of ordinary care in the pawnor the debt it secures is extinguished. But this doubt

seem a very reasonable rule, since the pawnee is liable to the pawnee for the value of the thing pawned. And however if the pawnee uses diligence in preserving the thing pawned & it is lost it shall not be an extinction of the debt Jones 106.7. 3d. Ray. 419. Bur. 1984.

A factor that is a foreign commercial agent tho he may dispose absolutely of the goods of his principal, can't pawn them.

His business is to buy & sell - his commission is constituted strictly. He can never transfer the lien which he himself has because it's part & not transmissible. Str. 1174. 5. C.R. 604. 1 H. Bl. 462. 4. Com. 227. Bro. 9. 255.

That is he can't transfer his lien so as to give a lien as the principal - yet he may transfer a lien as himself. He may hold the goods to satisfy a general balance.

If he does pawn such goods on tender to the factor of what is due to him, tender lies as the pawnee by the principle. I presume there must be a demand on the pawnee - tho this is not mentioned.

The pawnee may sell the pawn after the day of payt for his right is absolute in L. This differs from a mortgage.

When bonds are assigned they are still subject to a lien in the hands of the assignee - as to part putt. 1. Inst. 204.

the 14. thinks the pawnee ought to have the surplus in right - I am ought he not in L. P. Stat. 4. 85. Ann. 9. R. 453.

Is not by some tho the point is questioned, that the pawnee may assign before the day of payt i.e. transfer his right. 4. Com. 208. Owen. R. 125. 1. Bunt. 29. 31.

There are two cases which seem to contradict this before the day of payt he has only a lien which can't be transferred - especially this is true in a lien of proal pty - for this is a fiduciary cont. 3. Com. 606.

Again a lien can't be forfeited by the pawnee - But every thing can be forfeited for crimes which may be transferred as his own. 1. Inst. 4. 12. Co. 12. Bro 6556. Moor. 100. 1. Ba. 298. Bro. 2255. 7. R. 606.

At the same time the pty is in such a case that it may be forfeited by the pawnee for his crimes To be sure the pawnee is not to be injured, tho forfeited subject to his lien. 1. Co. 298. Yel. 179. 4. Com 259. 1. Bunt. 29. 2. Ba. 376.

Is not in Brooke who is a high authority that the interest of the pawnee can't be aliened before the day of payt. and this is recognised in. 1. Mer. 359.

Is likewise agreeable to the reason of the thing for him is a proal trust - which is not true in case of a mortgage. Proal pty too is movable & may be run away with - not so with real - & if the assignment were to be made to a leaver or a beggar the pawnee would be liable to be defeated of his interest.

There is a case in Ver. which seems to oppose this - but the truth is that the pawn was perfected by the person making the application, in consequence of non payt on the day. So its having been assigned before the day of payt made no difference.
2. Ver. 691. 698 R. Bk. 420.

Again a pawn or the interest in a pawn cannot be taken for debt in execution. Whatever can be sold or assigned can be taken in execution. 1. R. 298.

The pawnor may forfeit his right for crimes - the reason is he may assign it. 4. R. 29. 4. Com. 289,

Anciently it was decided to be essential to a pawn that it be delivered when the debt accrued or the money was lent - otherwise it was considered not as a pledge giving a special prop. to the holder, but merely as a license to encum the prop. 1. R. 298. Yelv. 164. 1. R. 352.

Secur. now. Dyer. 49.

It is now settled that it makes no difference when the pawn is delivered - since if A delivers goods to B as a security for a debt previously due from A to B, B becomes a pawnree with a qualific. & prop. so that he can't countermand the delivery - this a contrary opinion formerly prevailed. R. A. P. 38.
1. Boult. 64. Esp. 576

But if A delivers goods to B as a naked donation to B, the delivery may be revoked it seems before B obtains the actual prop. - because the delivery was without compensation. His holder that a gift nullifies any act of delivery, will not transfer any interest to the donee.

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May if he should take the articles without any delivery & presume an action would lie in time after demand
1. Ba. 239. 2. Do. 260. Exp. 557. Str. 355.

Commonly was doubted if no day of payt was fixed whether payt or tender of it would revert the party unless tender during the joint lives of the parties. Is now settled that the pawnor may redeem at any time during his own life - After the pawnor's death his extor at L. can't redeem - tho in equity I think they may. 4. Com. 254. Yelv. 178. 4. Ho. 79. 1. Buls. 29. Bro. J. 246. 5.

If the pawnor before his own death delivers the pledge to a stranger, without consideration, tender is to be made to the extor & not to the stranger & if after such tender the stranger refuses to deliver, trespas will lie in him - for the refusal is act of conversion. Bro. J. 240. 4. 1. Ba. 236. Yelv. 178. 9.

But if this delivery was with consideration, the question to whom tender must be made is the same as where pawns are assignables before the day of payt. If they are assignable tender must be made to the stranger - if they are not to the pawnor's extor. Yelv. 178.

When the the pawnor dies without redeeming I think his extor have the right of redemption, just as in the case of mortgager.

When the day is fixed by the parties redemption may still redeem - & why should not this privilege be granted when the day of payt is fixed by L. if a day is fixed for payt the person

interest is not forfeited by death. His estate may redeem by paying or tendering as he might do if alive. If the estate pays at the day the party surrenders - if not he has an estate of redemption.

If no day of payment is fixed, the presumption is enough time to redeem - & this R. which limits under his estate of redemption at his death, is a reasonable one. 4. barn. 251. 1. Ba. 299. 1. Rulst. 29. bns. 244. 1. bns. 178.

5th species of Bailment is a delivery of goods to the bailee to be carried from one place to another or something else to be done about or with them for a reward to be paid by the bailee. This kind includes a delivery to a private person in his individual capacity, or to a person exercising some public employment in his professional character. To a private person as a mechanic &c. - to a public one as a common carrier or warehouse &c.

Between these two classes there is a material difference I shall therefore consider 1st Private bailment. Of this kind is a delivery of goods to a private person, to carry from one place to another - to a tailor to make clothes - To a blacksmith, excise factor, agent &c. four. 50. 1289. Ed. Ray. 98.

So a delivery of cattle to an agisting farmer to be depastured.

The fifth kind of bailment is susceptible to both parties

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consequently the bailor is bound to only ordinary care & liable for nothing less than ordinary neglect. 1. Roll. ab. 4. Moor 549. Ld. Ray. 912. 1. Bos. b. 254. 12. Mod. 287. 1. Kent. 121. Jones. 120. 130. 4. 9.

Hence he is not generally liable for robbery &c. See 4. Jones. 198. Hobt. 141. 1. Inst. 492 4. Bo. 84.^a

For theft the bailor is prima facie liable - yet if he can show that he used ordinary care, he is not - the onus probandi rests on him.

Jones says if the goods are destroyed by the bailor's landlord, he is liable - for this is ordinary neglect. Jones. 151. 2. 9. Bl. b. 8.

But a distinction is to be observed between this kind & a mutuum. The latter is where the ~~pro~~ to be redelivered is so changed, that it can't be identified after the labour is done. When iron is delivered to a blacksmith that specifically can be restored. But a mutuum is to be so changed that it can't be identified. If silver is delivered to a smith to be wrought into a basin, the smith is not to be a bailor, by Jones because the ~~pro~~ is so changed that it can't be identified. This then is precisely analogous to grapes turned into wine or flour into bread, or grain into flour.

Thus if you take my bags of grain I may retake them as long as they can be identified, i.e. as long as the one in the same condition

In case of a mutuum the duty rests absolutely on the bailor.

When the grain is turned to flour it becomes a mutuum - it can't be identified & may not be retaken. Jones. 142. 3. 89. 2. Pl. 403. Pl. 698. Moor. 20.

If flour is taken & turned into bread remedy must be had by an action. I think therefore that the bailee is liable for any loss that may happen to a mutuum, for the ~~put~~ vests in him also lately during the bailment by the delivery. Suppose then that goods are delivered, & are destroyed & sold for rent. Then the bailee is liable only for ordinary neglect, since he is bound to use only ordinary diligence. The ~~loss~~ may destroy any thing he finds on the premises, this it should be the ~~put~~ of a boarder. Jones says he is liable for he don't use ordinary diligence to secure the goods. Jones. 141. 2.

Jones also raises the question how far the depository, is liable for goods taken for rent unrecd. He won't allow that he is liable on the ground of negligence, tho he may be on the ground of fraud, if he voluntarily exposed the things bailed to be taken.

Mr. G. thinks indts apt will lie in such case as the bailee, since the bailor's ~~put~~ has been used to pay the bailee's debt - this however is mere speculation unsupported by authority.

How far then is the bailee liable to the bailor? I think he is liable for the whole value of the goods bailed.

When the bailee is to some person who is to do some act of skill in the way of his trade, but

conts are implied by L. 1st that the goods be well delivered - i.e. be taken care of so that they may be redelivered, & 2nd that this work be skilfully done

When the act to be done is not in the way of the bailor's trade or profits, the L. will imply no cont that it be done skilfully - tho the bailor may bind himself by express agreement. 9. Bl. 55. 6. 11. Co. 94. 9. Jours. 128. 1. Saund. 924. Esp. 6601.

I think there is no obvious reason for this distinction - whoever professes a certain trade impliedly contracts with the public that his work shall be well done

Jours also makes a question whether the bailor insures or not - he thinks he don't - to be sure if he don't take ordinary care he may be liable. I think if he neglects to have his sheep insured, when tis a universal custom of the town to have sheep insured, & tis considered neglect to omit it, he would be liable. Jours. 142.

But suppose the goods are destroyed after the work is begun & before tis finished, or after finished & before delivery, thro want of that care which the L. requires, can the bailor recover for his labour spent on the goods prior to their destruction? I think he can't - for his labour is no benefit to the bailor, & his not being benefited is the fault of the bailor. In this case the goods were lost by his ordinary neglect, & he is liable for their value to the bailor. This observation was induced by a case in 10 Hampfield's time. 3. 3d. 599

2nd class of bailors viz. those exercising public employment in a professional character - This bailment includes the delivery of goods to a common carrier, a master of a ship who is a common carrier, a common hoyman, any person who carries goods for reward, inkeepers. The most usual class is common carriers.

A com. car. is any one who make it his usual business to transport goods from one place to another for hire or reward. He differs from a private carrier inasmuch as the latter don't make it his business - Under this class may be ranked a common porter, a common boatman, a common ferryman, a master of a ship who carries goods from one place to another, &c. It was formerly supposed that a common carrier meant those only on land. In the reign of Jas. 1st it was extended to hoymen - & in the time of Geo. 2nd to ship masters. Ann. 149. 152. 4. Geo. 4th 10. 1 Ba. 343. 4. 5. Ld. Ray. 918. Bro. 4390. Hobb. 18. 1 S.R. 27. Ray. 220.

A stage driver is a com. carrier if he make it his business to carry goods. 1 Vent. 190. Hobb. 17.

At the present time ship masters & ship owners are common carriers, because an action in the nature of an action on a common carrier, may be maintained in either. This is an exception to the g. R. of M. & S. Exp. D. 629. Salt 440. 3. Lev. 259. 1. E. R. Th. 13. Bant. 62. see M. & S.

If a common carrier who has conveyance to carry goods, should refuse to do so when applied to, he is liable to be sued in an action on the case - because he has broken an implied contract made

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between him & the public, that he will carry, when he can be paid for it, for any person. The case is the same as that of an innkeeper who stipulates with the public, to entertain those persons who come to his house, as far as he has convenience & not farther. 'Tis a general opinion among ^{many} people that neighbours may go to an innkeeper & call for liquor & compel him to get it for them - this is erroneous - the innkeeper stipulates to entertain travellers - not neighbours & students
1. Ba. 944. 9. Do. 380. B. N. D. 20. 3. Bb. 166. Hards 169.

The stat. 7. Geo. 2nd has exempted the owner from any expense, except the amount of the value of the ship & freight, when the loss is occasioned by the mismanagement of the M. & mariner. 1. S. R. 16. 78.

Altho a common carrier is bound to receive goods, it may be conditional - he may decide that he will not receive them unless he has notice, as that money is among the goods - or unless the owner will pay him in proportion to their value. 'Tis however settled that his demand must not be unreasonable - & this a question to be decided by the jury under all the circumstances of the case. He ought not to indulge caprice. But when the risk is incurred he certainly ought to be permitted to make conditions, as I suppose, whether them be money or other valuable commodity.
Exp. 622. Bur. 2298.

As this bailment is advantageous to both parties if there was nothing to impede his exercising care, he would be bound only to ordinary care

& it was so in the time of Hm. 8th consequently the bailer was not liable for robbery. In the case of Elva trover holder that he was liable even for robbery. Jones 145. S. 4. Ca. 84^a 1. Inst. 89^a 1. Ba. 354. Moor. 462

It is now held that a common carrier is held for all losses except those occasioned by the act of God, or of the public enemies of the land to which should be added those of the bailor himself otherwise he might profit by his own wrong. This distinction between common carriers & all other bailers, where the bailee is responsible to the parties, is founded in public policy. 1. Wil. 251. Holt. 191. D. N. P. 70. Ed. Ray. 918. Str. 125. Burr 1598. 1. Bart. 609. 1. T. R. 27. Talk. 14.

Common carriers must often be employed by strangers & must ought of course to incur a great degree of responsibility. The opportunities of fraud & collusion are very great. Ed. Coke says they are liable by reason of the reward they receive. But special carriers receive a reward also, & so do many bailers. This then is not the reason - it appears to be this, that otherwise carriers would combine with murderers & robbers & to the injury of their employers. Coke seems to draw his inference from their receiving a reward - but you must remember that the moment they ^{have up mind that they} cease to be common carriers, & become a mandatum. Barth. 455. Esp. 621. 1. Bart. 604. Jones. 145.

A common carrier then is considered an insurer in all losses but those I have mentioned - & all bailers are in the nature of insurers in all

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risks for which they are liable. 1. T. Rep. 297.
Str. 128.

By the act of God, says Mansfield is meant such acts as could not happen by the intervention of man - as tempests, deluges &c. A loss by fire not occasioned by lightning, is not considered the act of God. So an accidental burning will subject a common carrier in the same way as a sheriff is subjected for escapes occasioned by fire or a mob. 1. T. R. 34. 1 H. Bl. 119. Dyer 66. b. Exp. 620. Str. 128.

On this principle it has been decided that owners of ships are liable for damages occasioned by rats gnawing thru boards of barrels boards of a vessel, by which means goods are injured. I question this. 1. L. R. 15. 1. Mod. 88. B. N. 20. 1. Wils. 281. Exp. 620. 1. Vent. 239.

2nd Public enemies - by these is meant all private who infect the ^{high} seas, not rebels & private water pirates. Exp. 620. 1. Vent. 299. 1. T. R. 18. 1. Mod. 88.

If a common carrier is under the necessity of destroying his goods, & this is imposed on him by the act of God or inevitable accident, he is regularly excused. As if goods are thrown over-board in a storm. Exp. 620. 1. Roll. 567. 14. 1. Co. 63. 1. Ba. 948. 2. Bul. 280. Post. 60. Pearce L. Ch. 148. Jones 150. 1. East. 220. Stat. Bon. 291. 2. T. R. 487. Allyn. R. 93. 99. 3. Ba. 495.

Yet if he rashly & voluntarily exposes the vessel he shall not be excused - As if a ship's M. should put out in very tempestuous weather he would not be excused. Str. 128. Exp. D. 620.

If a carrier should throw out a lion of jewels it could not lessen the weight much. Hence he would be liable - even if he should throw out any cumbersome body as a hoghead of sugar - He is excused also if the loss should happen thro the bailor's negligence - as if he should have a pipe of wine put into his cask in a state of fermentation by which means it bursts. B. & P. 16.
68. 74. Exp. 621.

So if the bailor's carriage is full, & the bailor urges him so much to take the goods, as shews he intends to bear the responsibility, the bailor is excused - or he is not liable as far as common carriers in general. 2. Show. 127. 1. Ba. 944.

In order to subject a common carrier as such the goods must have been lost while in his possession or under his immediate & sole care - Consequently if the bailor should send a S. on board the vessel to preserve the goods, the bailor is not liable. But says Mr. J. if a S. is put on board to take care of the goods, the bailor is not liable at all events. For if he puts to sea in a tempestuous season he is liable for losses - but he is not liable for not taking care of the goods while on board, i.e. particular care. Exp. 621. Rub. 70. 1. Show. 927 or 77. Str. 690. Bro. J. 330. Holt. 17.

But there is a difference between sending a S. on board, & a mere request of passenger to take care of them - in the latter case the common carrier is not discharged at all. If a box be put on board, & a common carrier not knowing the contents accepts it, he is liable unless the acceptance is conditional. i.e. unless

discharges himself by a special agreement. Ar. 145.
Barth. 475. B. & P. 70. 2. East. 124. Jones. 140. 8.

This however supposes no designed concealment & the R in this view seems to be consistent in the case of the common carrier. Thus in the case of a depository. For he is not supposed of course to have the means of safe custody as a common carrier is, & of course is not liable as he is, i.e. whether concealment is designed. Allyn. 99. 38. 1. Kent. 238. 3. Heb. 135. 1. Bom. 119. Doct. & R. 140.

I will now mention 2 cases where clearly one is not liable. In one there was a wilful misrepresentation made to conceal the contents of a bag & the M. was considered liable - the other was similar. In these cases he was held liable because he did not make a special acceptance - as thus if you don't give me correct information I must be liable. But I think this an unreasonable requisition, & accordingly these two cases have been overruled in a number of modern ones. Jones. 144. Str. 145. 1. Cent. 610. Bur. 2900.

For the purpose of making a special acceptance however it is unnecessary, that the carrier actually see the owner of the party. It is sufficient if such notice has been given in a newspaper. As if he advertises that he will not be liable for articles of a certain nature, unless notice is given at the time of delivering it - nor unless more reward is given than usual. The jury will presume he knew if he had ample means of knowledge. Est. 622. Bul. 71. 1. H. Bl. 298. 2. T. R. 231. Bur. 2298. Barth. 475.

Under a general acceptance a carrier is liable for all articles carried, except the cases of fraud. ut ante.

But if the acceptance is special he is liable for only so much as he undertakes to carry. As to the residue he does not act as a common carrier, & is not liable as such. In other words he is liable for only so much as his reward extends to. Thus if a bag is represented to contain 200 £. only, for which the carrier is paid, & it really contains 400 £. - he is liable for but 200 £. South. 485. B. N. D. 70. 1. 14. Br. 298.

A M. of stage coach who takes him for passengers only & not for their baggage, is not liable for its loss. As to that he is a mere mandatary - he is if he carries it for him. Bow. A. 25. Salk. 282. B. N. D. 70. 2 Shaw. 194. 1. Ba. 349.

To subject him because he had a reward, his mere ceptancy that he actually received it. i. e. that the bailor has paid or promised to pay. The L. implies a promise & a recovery may be had on a quantum meruit. 1. Ba. 449.

Also is it necessary to subject him that the goods should be lost while actually in transitu - He is liable for any injury until the delivery of goods to consignee, unless he shows his not customary to deliver them to consignee - but here the owner probandi vult on him. It is the custom not to deliver them to consignee but to put them in a place of deposit, & while thus deposited in the carrier's warehouse they are lost, he is not liable as common carrier, but as bailor for him - as common carrier he is functus officio. 4. T. R. 941. Exp. 629.

When an action is brought on ship owners they must all be joined, because their liability arises ex contractu. If the consignee has directed what car-

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who shall convey, he is the person to sue the carrier.³⁰¹
Secus if the consignee directed. 1. Per. B. 249. 259,
B. & 238.

But if the action is brought in the M. it must be a special action on the case, treating him as having been guilty of negligence. In the former case the liability is on the contract - i.e. there was an agreement to pay freight to the owners. But the non-joiner of all the parties can only be pleaded in abatement. 4. T. R. 691, Bur. 264. 264.

Salk. 440. says this is not L. for advantage can be taken under the G. issue. For a G. R. that non-joiner of all the parties can be pleaded only in abatement. According to the G. R. principles a post M. was liable for the loss of letters, or any thing put into the mail - because at G. & L. any man might set up an office or ~~was~~ not then under the inspection of government i.e. not a public office. But since government directs it, i.e. since the restoration he has not been liable, for is not a public office. He receives no hire from the owner of the letter & makes no contract with him. A public office is not liable for any express contract made for the purpose of benefiting government. Salk. 17. S. d. Ray. 626. Comp. 754. 764
form. 189.

Besides if he were to be subjected the responsibility would be enormous - so much so that no one would accept it. The Post M. is not liable for the default or neglect of his under officers, for the reason above given. If however the post M. is in fault he is liable as any other person would be - but not as an officer of the department. Comp. 765. Salk. 18. 9. M. 443.

It is so that b. carriers are liable on the y. custom of the trade, & the common mode of declaring is to begin by declaring this custom - the however is improper for y. custom is but another name for b. l. & you may as well recite any other custom as this - it is accordingly even harder unnecessary. 1. C. R. 93. 1. Ba. 949. 3. T. R. 29. 1. H. 245. Jones 130. Holt. 15. Hand. 485. C. 1. Mod. 227.

When property is stolen from a b. carrier without any misfeasance on his part, the action is a special action on the case & not trover - for trover lies only in case of actual misfeasance - never for bare non-feasance. Holt. 201. 8. Salk. 688. Esp. 590. Burr. 2827. 8. 60. 156.

Innkeepers.

A delivery of goods to an innkeeper seems properly to fall under the 2^d class of the 5th kind of bailt. viz. The delivery of goods to a person executing a public employment, to have some act done with or about them for a reward. Esp. cell. it commodatum or lending goods. But clearly it has no resemblance to this kind. Lending quarters is where the article is to be used - the bailt is for the benefit of the bailee only, & is to a private person. In all these particulars do the two cases differ.

Better ranks it under the 4th or 6th kind, where goods are delivered to be carried on to have some thing done by for reward.

The keeper always keeps for him - accordingly Jones has ranked it where I have. Jones 192. 9. 4.
B. & P. 73. C. 62. 6.

6th Mandatum or mandate. The bailor is called a mandator. This is a delivery of goods to be carried or to have something else done about them for a reward. It differs from the fifth as there is a reward. A depository keeps merely - his duty is in custody - a mandatary performs - i.e. does some act with or concerning them. As this Bailt is gratuitous & beneficent only to the bailor it follows that the bailor is liable only for the violation of good faith - or gross neglect. There are some distinctions to be seen in particular cases - they are mentioned in the case of *baggs & Barnard*. Ed. Ray. 119. Jones 73. 1. Pow. Com. 258. 1. H. Bl. 108.

But when an engagement is made by the mandatary to keep them with all due care & skill he is liable - but merely on his own voluntary stipulation - not as mandatary. Jones 73. Ed. Ray. 119. 1. Pow. 675.

This was the precise case in *baggs & Barnard* - there was an express agreement to carry it safely. He was not charged with fraud, but negligence - the point however was his agreement. This agreement to use all necessary care & skill may in some cases be implied by L. This however is when the act to be done is in the way of the mandatary's business. 1. H. Bl. 108. 161.

Jones distinguishes between the duty of a bailor when it lies in *insurance* - & when in *custody* - & says in the former case the L. implies an agreement to use all

necessary care & skill. & in the latter not. I think there is no ground for this distinction. Jones 73.4.

This opinion is opposed to a case in H. Bl. I shall presently state it - when there is ~~no~~ engagement either express or implied, to use more care than the bailee takes of his own goods, he is not liable except for gross neglect. Jones 7.

He can alluded to above is one where the person agreed to have another's goods entered with his own, & he did it under a wrong denomination & in consequence they were seized - it was held that there was no express agreement to take extraordinary care of them - & consequently there was no ground for his using his own in the same manner yet here the duty lay in conscience & according to Jones an implied one existed. 1 H. Bl. 148.

Jones goes farther with this distinction without any authority. He says that where the bailee's duty is to carry the goods gratis - he is not bound to ordinary care, or rather necessary care. And when some act is to be done to or with them - this distinction is wholly unfounded; he says expressly that the decision in Boggs & Bernard ought to have been as it was. So that his doctrine is, that when goods are to be carried an agreement is implied - but when something is to be done no agreement is implied. Jones 87.

This I think absurd. Perhaps the only fault in Jones is that the distinctions are too subtle & their application to particular cases is difficult. An agreement to use ordinary care & skill does not extend to the keeping. So a tailor engages to make

the government would not to keep it after his death
with such care - as to keeping he is a depository -
as to making a mandatory.

The agreement don't extend so far as to guard
us foreign cases - consequently if a government is
stolen the bailor would not be liable tho he
would if it was badly made. This is agreeable to
the case of *Loogs & Barnard*.

So if a drunken man had pierced the card the
mandatory would not have been liable tho he
was bound to keep it safe.

The liability may be qualified or limited by
an agreement - yet neither a mandatory or other
bailee can exempt himself from liability for
fraud, by any special agreement - would be con-
tra bonos mores. *Howe v. 26. 75. 1. Paro. B. 250.*

There is much controversy in the books whether
a mandatory is liable on the ground of con-
tent. Some say the omission of stipulated care is
gross negligence - but this compounds all the differ-
ent degrees of care & neglect. *Howe 127.*

Contra bus. p. 667.

If then one should engage to use all possible care &
restricting the use of it a loss would happen
it might be held to be then gross neglect - but this
would be absurd. It is indeed holden that there
can be no cont. there being no consideration -
the cont. is a modern factum. Bailors that nei-
ther mandatory, nor depository, will receive a
benefit - but they a person don't need considera-
tion to repound it.

The & requiring ^{extra} courts to be supported by a consideration is the hardest & most rigorous in the L. But even on this the promise is good for the delivery of goods is consideration sufficient - it would be a loss on one side & a gain on the other unless he could recover them back again by action - this is a sufficient consideration - & the books coincide. Holt says himself delivery is sufficient - entering on trust is sufficient - this point has been judicially decided. A delivered to B who promised to deliver to C. which he did not do. A brought an action on the implied promise, & recovered by the unanimous opinion of the Ct. This is much stronger as there had been just before a decision in the time of Pelverton to the contrary - They sd delivery was sufficient. The action was on a promise & not on money had & received. 1. Bro. & 364. Bro. & 667. & Ld. Ray. 910. 914. 4. Sl. 128. contra. Dr. & Ct. 129. & C. R. 149.

If a promise as such is not binding on a party, how can his liability be increased by the court? & then if tis void as a court how can it extend his liability & then make him liable on the ground of tort? The court can't create an obligation or add to it - & yet our opponents contend that this will subject him in a greater degree, than he would otherwise be - & yet he is not liable on the court for tis a nudum pactum & can't operate.

Since more for there has been much altercation on this subject - Why is it that all our books speak of engagements & courts & the like in their cases, if it don't operate at all but he is subjected only on the ground of tort? they say then into an implied engagement, to use such a degree of care - I say then he may be sued on his court. He may also on tort as

as the case may be - & this is true with respect to mandamus & depositions.

A question was put to Mr J. whether a deft being uninsured & afterwards, letting judgt go on him by default, can take advantage of this uninsured? Appearances real or fictitious always precede judgt. Advantage is to be taken of this defect by judg or abate^r - He has no right then to stay away from it, & refuse to pursue the mode prescribed by L^d, after he has been served with a process. If instead of suffering it to go by default he should appear & take advantage of the uninsured, in that case he would for ever afterwards be precluded from taking advantage of it.

In certain cases the bailer has a lien upon the thing bailed. A lien properly so called is a direct claim^{to}, or incumbrance upon some specific thing by way of security for a debt or duty. In this sense it exists only in favour of bailers of the 4th & 5th kind - 4th more frequently - a pawnbroker always has it - 5th sometimes. In the 4th kind delivery carries it, & it requires nothing ex post facto to create it. Bro. J. 248. 5. Yelv. 178. Rep. 689. Salk. 522. R. Bk. 419.

Most bailers of the fifth kind have such a lien when the thing is delivered to be carried, or to have some thing done with the thing bailed. Holt. 42. 9. Ba 185.

A third person who obtains possession of the goods unlawfully from the bailer, can't take them subject to this lien, & they may be recovered without tendering to the bailer what is due to him - even when his property is obtained lawfully - for he is not necessary

tender - after tender he may recover

there can be no assignment of a lien tho it may be delivered to a third person, who holds instead of the bailor. A pledges goods to B for a debt to be paid in 6 months - B here has a lien upon them - he can hold them as A but if B obtains them he can't hold them as A. A may demand them & upon a refusal he may bring an action in R. This is upon the principle that a lien can't be assigned. 9. East. 485. & 1 R. 485.

A carrier therefore has a specific incumbrance upon the goods carried until his fare is paid him. One reason is he is bound to receive the goods tho he is not bound to restore them till the money is tendered. 10. Ray. 452. 867. Salk. 645. Burr. 2226. 1 R. 269.

If goods are stolen & the thief delivers them to a common carrier, he may retain them even as the true owner till the money is paid. He can't stay to enquire into the true owner - & consequently is not his neglect to receive them not knowing the true owner. Therefore the R. that when one of two innocent persons is to suffer by an act of a wrong doer, he shall suffer the loss who was the procuring cause don't apply. 10. Ray. 867.

An innkeeper also has a right to retain the person & horse of a traveler - the person for the necessary entertainment - the horse at least for the expense bestowed upon itself. The person is a pledge for the whole - the horse is not - & this is an analogy to all other R. as to a lien. 1. 1. 15. 1 R. 269. 2. 1. 147. Salk. 384. 1. 1. 67. Rep. 128. 179.

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When one has bestowed labour on any thing he may detain it, till the expense is paid 309

If a horse is left at an inn by a stranger, still the true owner must pay for his keeping before he can take him away. Exp. 584. 3. Ba. 185.

It is also not that a bailor has a right to detain a garment till paid for making - I doubt ^{why} it would apply to any other workman, tho' they are not included in the R. The Taylor is not bound to receive the cloth. The true reason seems to be the benefit of commerce. 8. Co. 147^a Holt. 42. 1. Ba. 240.

It may seem questionable however whether the Taylor has a right to the lion, when he has been accustomed to make them on trust. I should surmise that he had waived the right - this however is mere speculation. An agistering farmer, has no right to detain cattle till paid - because he is not obliged to take them & the benefit of commerce does not require it. 1. Ba. 240 B. N. P. 45. Bro. & 197. Exp. 585.

A delivery of the thing bailed to the owner is an extinguishment of the lien - because ^{possession} is lost which is indispensable to a lien. After delivery it can't be retaken.

The capt. of a ship has no lien on the ship, tackle or stores &c. of a ship for his wages or for provisions with which he may have furnished the mariners. Sailors or mariners can li. the ship for their wages but this is no lien. Doug. 97.

When there is a special agreement on which the bailor relies, he has no lien, tho' without such.

agreement he would have it implied. When the agreement is made the L. supposes him to insist on it. When there is an express agreement the L. must imply one. 1 Ba. 271. 2 Roll. ab. 72. Exp. 585. Yelv. 66.

A factor has a lien imposed by L. on the goods of the principal that are in his actual possession. For the full consideration of this see. M. & L. 9. T. R. 119. Bur. 714. Exp. 8. 108. 2. Ch. R. 1154.

The factor may retain the goods of his principal as well for a particular as for a general balance. This lien of the factor or any bailee is lost, by his delivering up the goods for any length of time to the bailee or to the owner. It is lost from the very moment of abandoning the goods. The lien is in the nature of a pledge. 7 T. R. 359. 5 Da. 604. 1 East 4. Str. 1168. 1 H. Bl. 362. Bur. 499.4

Bailees of the second & third kind have no lien. They have a right to retain but not as a lien. So a hirer has a right to retain the horse hired for the time agreed upon. It is similar to a pledge. The same may be said of a borrower. 1 Ba. 240. Yelv. 172. 1 Roll. ab. 128.

The true foundation of the hirer's or borrower's right to retain, till such time as the special property conveyed by the bailor to the bailee expires, is that they have a transient ownership. Secus a carrier.

Bail of Things by those who don't own it.

Roll says if A baile to B. house, the bailor must deliver the house to the bailor, for to do the bailor can't judge of the right between the bailor & the owner. It seems to me this would be a good reason for his delivering the house to the bailor - but not why he must do it. Thus A however lays him under the necessity of delivering it to him, tho he is convinced he is not the owner. I imagine this is not the meaning of the R & in confirmation of it, we may remember that if he delivers it to the bailor before the action is brought, or before judgment is rendered in him, i. e. pending the suit, he is discharged. I apprehend then that the law is this, that he is excused for not delivering it to the true owner, ~~either~~ by delivering it to the bailor before the action is brought, or before the judgment is rendered. 1. Roll. 606. 7. 1. Ba. 242. Foter. N.B. 637. 137.

There is a modern case fortifying this doctrine viz. A's goods were stolen by B. & were delivered to C. a carrier, & the law is that he should restore them not to the thief but the true owner after the payment of the fare or forage. Exp. 599. Ld. Ray. 867.

If the bailor dies, his exec^r must at his first delivery deliver them to the true owner & not to the Bailor. The reason given for the R. is that the L. gives him possession of them - hence he must deliver to him who in L. is entitled to them. Whether this is L. I don't know - I find it in the books. I see no reason for this distinction, the exec^r don't know the true owner - he in general

however hazardous to speculate concerning the reason of the l. Ita lex scripta est is in general sufficient. 1. Roll. 607. 1. Ba. 297.

The rights of a Bailee's Duties who buy on the party as his, & of purchasers under them. By the stat 13. Eliz. made to avoid fraudulent sales, & to defeat entries, tis laid down that if the purchaser of goods leaves them with the vendor the bill of sale &c being absolute, the entry void is or there will hold in the purchaser - such sale being in general to secure party, & having a tendency to give false credit to the purchaser & to hold out false colour to the world in his favour - hence the R is founded on the original sale being fraudulent as the colour of the vendor, so that the original purchaser acquired in them no title whatever. 3. Co. 88^b. 2. Ba. 601. Exp. 540. 2. T. R. 587. Comw. 432. 1. Atk. 180. Kel. 180.

The l. therefore as it stands under this stat dont perhaps fall under the head of baillie strictly speaking. When the transaction is within the stat the vendor as he acquires no title in colour, is not properly speaking (as far as they are interested) to be considered as a vendor. This l. however being closely connected with baillie ought to be noticed here.

But if the want of immediate profit be inconsistent with the deed of sale, as when the deed is conditional, tis not of course fraudulent, for by the terms of the deed, the profit can take place

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till the condition is performed - hence the presumption of fraud is rebutted. Exp. D. 541. Bousf. 492. 2. T. R. 595. 6. 7. 1. Atk. 167.

When the case is such that an immediate actual possession can't be given, as in case of a sale of a ship at sea, the delivery of the bill of sale is considered as the delivery of the ship. 2. T. R. 466. 4. 468. 1. Ker. 365.

Quere. If the condition be subsequent as in a mortgage of goods, will the mortgagee's remaining in possession till the day of payment, being the case within the stat of Jas. 1st. 1. Ker. 365. 2. T. R. 468. 6.

In the case of the ship above mentioned, the want of immediate actual possession will not make the sale fraudulent - it may however prove fraudulent indicating fraud if there be any

The stat 19. Ed. relates only to entries & not to purchases, & is in affirmance of the C. L. only as to antecedent entries. 2. Ba. 60. 9. 40. 87. 6. Litt. 290.

Ed. Mans says the C. L. would have attained every end proposed by the stat. Bousf. 431. 4.

The consideration that false credit is given holds more strongly in favour of subsequent entries than prior ones. 4. T. R. 71. 2. T. R. 396

The presumption of fraud under the stat Jas. 1st is not founded on the ground of the original bailment being fraudulent, but on that of false credit. 1. & B. 40. 42.

If the want of immediate possession be not considered

with the deed, is fraudulent *per se* in point of L. & not merely evidence of fraud - so it can't be rebutted.

By the stat. 24. Jac. 1st when he becomes a bankrupt, none in his disposition under & *posse*, the goods of an other person by the latter's consent, they are liable for the bankrupt's debts. Exp. 566. 1. Atk. 166. 1. Ves. 384. 17. D. 12. 224. & Do. 92. Doug. 309. Co. 82. Cowp. 32. 1. B. & P. 32.

This stat. extends to goods not originally belonging to the bankrupt but bailed to him, or permitted by the owner to be in his *posse*, as to such as were originally his. Cowp. 299. Exp. 599. 189. 1. B. & P. 82.

Concerning goods originally belonging to the bankrupt & by him sold & permitted to remain in his *posse*, the Act was as strong before the stat. in favour of the creditor now - for by the stat. 19. Ed. 4 at E. L. the sale would have been fraudulent in *contra* of the bankrupt.

The rebutting of any presumption of fraud if it seems of no avail under this stat., here is the stat. does proceed on the ground of fraud between the bailor & bailee, but on that of false credit. 1. Atk. 181. 183. 1. Exp. 566. 1. Atk. 189. 2. P. 618. 1. Ves. 364. 87. 9. P. 10. 187.

This stat. extends to mortgages as well as to absolute sales when the vendor remains in *posse* & becomes a bankrupt. 1. Atk. 165. 1. Ves. 358. 260. 1. Atk. 261.

If the *contra* claim the *pro* precedent to the vendor's right of *posse*, it would not I apprehend be within the stat. - for the purchaser don't voluntarily entrust the vendor with *posse* of which he has the right of *posse* the stat. don't extend to ships at sea. 1. Atk. 160. Exp. 166. 2. 585. 91. 1. Ves. 382. 361. 2. F. R. 461. 2. 585. 491.

So under many other circumstances a manual delivery is not necessary, in particular cases. The delivery of the key of a store containing goods is enough. 7. J. R. 71.

To come within the stat goods must be possessed by the bankrupt, or in other words they must be in his possⁿ order & direction. Comf. 293. 1. Atk 185. Exp. 567. 572. 3. J. R. 316. 7. J. R. 71.

Consequently a temporary possⁿ for a particular purpose, as till an opportunity of rendering the goods to the vendor, is not within the stat. Exp. 570. 567. 1. Atk 978. 1. Atk 185. 1. B. & P. 82. 1. P. Wm 315. 1. B. 185.

The bankrupt must appear in all cases to be the owner in order to bring the case within the stat - for if from the nature of the business, the presumption of ownership is excluded, the true owner shall hold as in the case of a factor, goldsmith &c who don't deal in their own stock.

The stat of 19. El. & 21. Jas. are in favour of owner & not of purchasers. 2. Ba. 602. Dow 484. 1. B. & P. 82. 1. P. Wm 315. 2. Do. 185. 1. Atk 185.

Possⁿ of real prop^y is no evd of ownership - records deeds &c. are - but as to local prop^y possⁿ is evd of ownership. 1. Atk 185.

The stat 27. El. is in favour of purchasers - the Com. L. would however have attained all the ends of both stats of 19. El. & 21. Jas. if as far as relates to the rights of persons, imposed by giving false credit, be in affirmance of the B. L. Comf. 492.

In common cases of bailment, when the bailee was such an one as not to bring the case within the stat 19. El. i. e.

was not the vendor, or is not in possession as to bring it within the 21. Jas. 1st, & when he does become a bank as within the 27. Eliz., the 4th A. is that the true owner i. e. the bailor, may have trover as the purchaser, under the bailor, or any subsequent purchaser, or a party who comes on through the bailor, unless the sale was in market overt - & so is any person into whose hands they might have fallen however innocently he obtained them 9. Aeth. 44. Salk. 276. Str. 1187. Esp. 108. 110. 179. 1. Ba. 260. 6. 768. 1. Wils. 8. 2. T. R. 376. 4. Do. 640.

This & it seems if founded on convenience in Eng. It has been several times suggested, that the possession of chattels ought as in third persons, who trust to it, to be considered as ownership. 2. T. R. 376. 4. Do. 640.

There is an exception to the last R. when the party bailed is money or bank bills. There a regular & bona fide transfer by the bailor, tho' not in market overt binds the party. Burnett coin & currency must not be embarrassed says Lord Mann. Esp. 572. 980. Salk. 126. Burr. 146. 1. R. R. 585. 1. Burr. 542. Leading case.

When the goods are left with the bailor merely to keep, no purchaser can hold them as the bailor, because they are not within the order & disposal of the bailor, & therefore can be sold without a violation of the term of the bailt. 1. Aeth. 185. Esp. 567.

Under the stat 13. Eliz. the presumption of fraud could be rebutted even in Bon.

A note of the bailor could bind as the bailor, if the possession of the bailor be so explained, as to exclude the presumption of fraud.

The & it seems would stand on a much more rational foundation, if this broad principle were made the R. v. n. that when one of 2. innocent persons must suffer by the act of a third, he who trusted the third & enabled him to do the wrong should bear the loss rather than he who did not trust him. Doug. 72. 22. 2 T.R. 70. 75. 175. 1. 11s. 960.

If goods be bailed for him to be used by the bailee for a certain time, is a question whether the bailor can take the care of them during the bailt. 75. 11. 12.

It would seem by a dictum of a judge in T.R. that he might take them but as a pool trust & not transferable by the bailee.

Constructive possession means a right of present possession.

A lease of a thing real can be taken in execution.

A bailee a yoke of oxen for six months to B for time & B. the owner of B takes them on execution for the use of them during the term - & B brings an action of trover vs the Sheriff. Is it maintainable? There is a difference between specific duty in a real thing & a pool chattel. In case of a pool chattel there is a pool trust - A may be willing that B should have the oxen, but no other person. Analogy of L. is in favour of this & by the case of parsonage, for which this very reason is given that it is a fiduciary trust. Suppose a case A person hires a horse to ride from him to York - now can another person attack this horse & ride him thither? The answer is obvious & needs no further illustration.

The actions that bailors & bailees are entitled to as it respects strangers & each other.

It is a G.R. that the bailor having a G. P^{ty}, may have trespass trover or any species action vs stranger, who takes or injures the thing bailed while in the bailor's possession. his having a G. P^{ty} is what gives him the right of action - he has the fee simple if we may say of real property Co. Litt. 114. 1. Roll. 4. 2. Bul. 265. 8. Ba. 164. 260.

And this will hold true even tho he himself should never have had the paper. So if it has obtained a right by a bill of sale, he can have an action for an injury done the thing, tho there was no delivery. Construction papers exist in these cases & this is sufficient. 1. Id. 498. 1. Ba. 164. 260. 2. Id. 214.

There can be no construction paper when another is actually in paper adversely. The definition holds only where there is no adverse paper.

This is true of land, & precisely the same may be said of real chattels - the right in these cases decurs after it the constructive paper.

Suppose then one lends goods of another to be used for a certain time, can the bailor have an action vs a stranger for taking away or injuring them during the time? I say no because he has no right of present paper - the bailor truly has but not the bailor - the bailor may after expiration of the time & demand made recumtate trover - but he can't found his action on the original wrong - the history of this is rather singular - the bailor sought the paper in this case - the King Bench in trespass was not the proper action but trover - soon after trover was brought, & the same it held

that this would not be, because in order to maintain
lender constructive possⁿ was necessary. 1 S. 2, 182, 4 to 581.
7 Do. 2, Ex. 388.

I suppose if punishment is heard at the same time
with the pawn is considered appendant to it. If
goods in the possⁿ of A are, by B the owner, without
any delivery, given by hand to C, & a stranger in
power then while in the possⁿ of A, C can't have an
action as the stranger - he has no actual possⁿ nor
will a fraud gift transfer constructive possⁿ. Should
be a very different case if he had purchased - I like
more a gift by way of sale confers no constructive
posⁿ. Slight acts will amount to a delivery. Thus
delivering a key, or delivering to the donee's S. 2, Ex. 577.
11th 957. Garth 274.

Delivery to the donee is sufficient - for to the S. is to the
ch. agreeable to the maxim qui facit per alium facit
per se. Com. 249, Ex. 14.

If the bailor gives the goods to stranger, the bailor
can't have trespass or trover - certainly not trespass
for the possⁿ was lawful then was no force. Yet
if he demands the goods of the bailor's donee, & shows
ownership, the bailor may then have trover. He
can't before this demand - for the delivery before can't
be considered conversion, then being no misfeasance.
- the delivery indeed would actually be if he had done
misfeasance. The stranger may discharge himself before
action brought, or pending the suit by delivery to the
bailor. 3 Bu. 164, 261, 1 Do. 297, 1 Roll. 206, 7, Ed. Ray. 467.

Bailers. they maintain trover as any person who takes
away or injures the party for the full value - the ground of
this is as to be in own liability to the bailor. 12 Co. 62, Ed. Ray.
276, 1 Mod. 91.

There is some question however as to depository in
 Southcott's case. 3 C. & P. 83 Exp. 577, Salk. 139, 1 Pa. 168, 262.
Id. Ray. 276.

Look in the case mentioned says the depository can't
 maintain trover - for the ground of the action is the
 bailee's liability - & here he is liable only for fraud -
 i.e. gross neglect. 4 Co. 89. 4, 2d 497, 1 Aust. 29, 1 Pa.
164. 5, 262.

I think he may maintain it. for if every bailee
 has a special privity in the thing bailed as before - but
privity always makes causal paper is sufficient for
 maintaining an action as a mere wrong doer - tis
 a solecism to say that L. gives a man a right of paper
 & gives him no means of retaining, so that a wrong
 does may say I have as good a right as you. 7 Pa. 392, 8
James 112, 1 Pa. 240, 356, Exp. 577, 572, 1 St. 501, 5 Pa. 262.

Actions vs Finders of Looting Ticket.

Kington says the finder has such a privity, as enables
 him to keep vs every person but the rightful ow-
 ner - & says he may have trover. This applies with
 force in the case of a ticket - for the finder is a mere
 volunteer St. 505.

Again tis settled that a 'S being robbed may have an
 action vs the hundred, tho he is not liable for the loss
 except in a very few cases. The reason is he has a right
 vs all the world except the rightful owner. 4 Mod. 204,
Donb 267.

In the last case tis sd the right of paper gives the right
 of privity, Donb 267, 1 James 410, 11 Co. 67, James 129, 130, 2.

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Justice Buller in the case of *Strange v. Rogers*, special party is sufficient for maintaining an action of trover. He is the next highest duty to Master. B. N. 239, 7. T. R. 969.

He says again if the horse for life has a horse thrown down by the wind he may have trover as a stranger who carries away the timber on account of his special party. B. N. 239.

An uncertificated bankrupt may have trover as a stranger, who takes the goods out of his possession if he has possessed them since his bankruptcy. His holder that special party or even lawful possessor is sufficient as a wrongdoer. Such actions were not brought till lately. There was an objection taken that he could not maintain the action - & the Court said special party is sufficient as a wrongdoer, & that an action could be maintained as a true assignee. 7. T. R. 991. 1. B. & 2. P. 94.

boke says the depository can't maintain trover because he is not liable over to the bailor. I answer he may be liable in some cases, as for gross neglect - & as bailor is liable at all events. So he has on this ground (tho' it is not true) the same right as another bailor. The question of actual liability is not always to be tried. Policy also requires that the bailor to keep should have the same rights, for the bailor might be at a distance & a special remedy necessary.

Not only the original bailor but any person to whom he delivers them may maintain an action - for to him he has a special party, & is liable to both the bailor & bailor. 5. B. N. 260, 1. T. R. 233, 1. Roll. 607.

An auctioneer may maintain an action as a wrongdoer, or a buyer when the true owner knows that he is not the

owner, for he is a sort of broker. On the same principle a factor may have an action, even on a count the law known in actio for another. 13. 60. 69. 1. Ba. 168. 208. Act. 1. 120. 1. H. Bl. 81. 2. Do. 591.

There are many cases then when the bailor & bailee have a right to bring an action for the full amount it is not in every case. There can be but one recovery however for the full value, for the same thing, i.e. but one in trover & one in trespass - since a recovery by one is a bar to the other. 13. 60. 69. 1. Ba. 168. 263. 2. Roll. 569.

I apprehend also that the mere commencement of the action by one ^{against} ~~party~~ ^{right to} the action of the other, for the same thing. He who first brings the action attaches in his right. This R. is not laid down in this manner, but I reason from analogy. So in case of appeal by robbery, an action in the S. bar another by the H. & so a converse. batch 127. 9. Ba. 589. 2. Roll. 569.

This is fortified by another analogy - in case of escape if the action is commenced before making it dam a pross suit - recus if retaken before the action is commenced. ens 1. 687. 9. 60. 44. 92. Str 279.

If the bailor has recovered in the wrong does he cant recover in the bailee, tho he might have sued him - he can have but one satisfaction. Yelv 68. 3. bar. 125. Ed. Ray 1217. Co. L. 319.

By commencement of an action in the wrong doer, I suppose he waives that in the bailee - this follows because the commencement of an action by the bailor in the trespass bar the bailor - for if recovery is had in the bailee he ought to have an action in the wrong doer, to indemnify himself.

This is perplexed by analogy in case of a vessel,
- in which if the pilot resorts to the necessity for rated
faction, he waives his right in the sheriff - so says Exp.
& it seems reasonable. The th. him is a kind of trustee
- I however doubt. Say this down as L. 8 (Ba. 17), such.
24th. Exp. 610. 612. 1. Wood. 663.

This is analogous to electing one of two remedies
in other cases - as debt & distressing for rent. 1 Wood.
663. Bro. 672. 49.

On the other hand if the bailor commences his ac-
tion vs the wrongdoer. he is liable to the bailor at
all events - for he has no right to deprive the bailor
of his right of action vs the wrong doer - nor to in-
fringe the right & in this way endanger it, as by
the stat of limitation. I here suppose the bailor guilty
of no neglect - & he would not be liable unless he
used the wrongdoer

The commencement of an action by the bailor for
full value, deprives the deft of his full value,
yet it does prevent the bailor from recovering the
real damages. 3. T.R. 68.

An action will lie by the bailor vs the bailor, for
taking the thing bailed before the special party is determined.
The action is on the case - not trover or trespass. for
there lie only no strangers, since they are founded
only on his liability to the bailor.

This doubt hold in the case of a mandalory or depor-
tory - for the bailor may countermand the bail at
any moment - seeing with a minor - only taking the
pity in these cases no injury is done. Exp. 481. 8. Ba.
155. 266.

The article R. is generally not immovable, but it is
 exactly the same as the original purpose was
 lawful. The exception to this R. is when he has dis-
 posed the goods for by delivering he discharges the
 character of bailor, in contemplation of the time immen-
 se, in the time D. 60. 156. & Inst. 59^a S. 60. 13^o 2. 112.
 262. 9. 11th 46. Rest. re. 131.

As to the right of the bailor & bailee in the goods
 If the vendor of goods directs the vendee to send them
 by a particular conveyance, he must bear the loss if
 there is any. The vendee & not the vendor is the per-
 son to maintain the action as the person who
 loses the goods, because he is liable to the vendor
 on the other hand if the seller selects his own con-
 veyance, & takes upon himself to deliver the goods to the
 vendee, he stands to all risks. Corp. 24. 6.

When the vendee selects his own carrier, & subjects
 the goods to the loss, the vendor is excused on the
 ground of the finis of contract.

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Inns & Innkeepers

It is any person may be an innkeeper nearly his
inconvenient to the public - no license is necessary
By inconvenient is meant when inn becomes too an
nuisance - then they are a nuisance & the licensee
prosecuted for it. 9. Bo. 174. 2. Bro. 6. 562. 2 Hale. 174. 4. Bl.
168.

He who opens the house becomes subject to
the duties of an innkeeper. Atm. 974.

Inns by being disorderly or nuisance & the keep
ers be indicted for it. 1. Hawk. 198. 229. 4. Bl. 168

But ale houses in Eng. by stat. Ed. 6. must be li-
censed. Atm. 99. Salk. 55.

In Bor. Inns can't be kept wth out licence. Stat
Bor. 479. 512.

License may be suspended in Bor for irregular pro-
ceeding in the innkeeper. At 270a.

Duties of Innkeepers - they relate principally to the
entertainment of travellers & the custody of his goods
& baggage. 2. 3. 87.

If an innkeeper refuses or tardy of reasonable
price he is liable to an action ~~in~~ the case by the
traveller & is indictable as a public offence - ~~multiple~~
has some good cause. Bl thinks he enters into an
implied engagement ^{to this effect}. Hawk. 225. 4. Bl. 168.

The care of an innkeeper extends not to the person
of his guest. 8. Bo. 92

If he sells unwholly good or liquor. he is liable to an action on the case 1. Roll. ab 98.

The innkeeper is a bailee of the fifth class of the goods of the guest - there is mutual advantage & hence in common cases such bailee is liable only for ordinary neglect - but the policy of the L has extended his liability somewhat farther - tho not I suppose as far as in case of a common carrier. Jour. 138. 4. 135^{2d} 6.

He is liable for any loss to the guest occasioned by his dr. even should the L. burn the house & thus destroy the goods he would be ^{liab.} L. Co. 32. 9. 1. Ba. 490. R. Ch. 173. Exp. 626

If the goods are stolen by a stranger the host is liable as a G. L. tho if the guests own L or companion does this he is not liable. L. Co. 99^o Bro. 628^o 7. B. 183

I conclude an innkeeper is liable in a case of common robbery on the same ground of policy - tho I find nothing satisfactory in the books. And indeed in Rolod. that if by public enemies he is excused - this seems to imply that nothing else excuses. Jour says he is excused if the force is such as can't be resisted, or is truly irresistible. How. 1. L. Co. 32^a 7. Ba. 182. Jour. 148^o

Still I think it not precisely ascertained how far an innkeeper is liable for common robbery.

See also see Ld. Coke that an innkeeper is not liable for the loss of goods unless by neglect of himself or his L. This is not L. Swan denied in Kings Bench by

Justice Buller - who says is unnecessary to prove neglect. 8 Co. 93^a 5 T. R. 276.

These R. contemplate only the goods *infra* the
pittin - but this includes stables, barns, & out-houses
or §. 60. 92^b 1. Roll. ab. 4. B. Ch. P. 79. Exp. 8. 627.

If the guest directs his horse to be sent to a far-
m where he is stabled, the keeper is not liable
- even if no direction. Also if he is lost by
neglect of the host he is liable for the loss in
both cases. If the fence is poor, or the bars left
down. 1. Roll. 5.

He is not discharged from the liability im-
posed on him by these R. by sickness, absence or
insanity. This too is founded on *habitus* policy.
Bro. 8. 622.

An infant innkeeper is not liable as innkeeper.
his parentage takes place of the custom. 1 Ball. 2.
9 Ba. 182.

If an innkeeper refuses to take a guest because his
horse is full, & the guest insists on staying & ta-
king his chance, the innkeeper is excused from
liability unless by his fault &c. 182. 3. Ba. 189.

If the host requires the guest to lock his door
refusing to be liable unless he did, it is immaterial
whether he is liable, if the guest refuses to do it.
I think the host ought to be excused. Dyce 260.
Moore 57. 184.

But the delivery of the key of the guest's apartment
went to him, must discharge the innkeeper. 8 Co. 93.

The host is liable according to the distinctions taken, even tho he does know the value of the goods. Moor. 188. S. T. R. 273. 4. 60. 395.

But I should suppose that if the guest deceives the host as to the value of the goods, the host would be excused - tho this is not decided - tis a matter of opinion.

This liability of the host extends only to travellers ^{not} to those who board at his house at the common Inn. 4. 60. 392. 1. Roll. 2. Skin. 276

He is liable, the owner being absent, for goods when he is not paid for them keeping - but the owner must be so absent as not to be a guest. He may, however be liable as a depository. 1. Roll. 2. 138. Bro. J. 188. S. T. R. 273. Rep. 179. Mo. 126. Moor. 377.

If he does receive a profit for the goods tis near, tho the owner is absent. Bro. J. 188. ut supra. Skin. 388.

If a S. is robbed of his ch. goods at an inn the innkeeper is in the ch. Bro. J. 224. Yels. 162. S. T. R. 273.

Remedy of the host as his guest - he may detain the guest or his horse till the bill is paid - he has a lien upon both. But there is this difference. He may detain the owner till the whole bill is paid. but he can keep the horse only for the part of the bill which he occasioned - If the owner of exhors he may be persuaded & brought back. J. 188. 988. Barth. 80 2. Roll. 48. 2. Roll. 2. 488. 3. Ba. 188. 6
Goods I presume he can't detain."

Inns & Innkeepers

337.

The innkeeper cannot use a horse that he has
retained - if he does he is liable in trover or trespass.
Sti. 586. Mass. 879, 4. Ba. 185.

340

Lex Mercatoria.

Mr. B. has been informed from the customhouse
of Mr. B. Yet he is not to be pitted in the light of a custom-
house officer in the L. of a particular place, not in accord-
ance with the L. of the land, & at which act is not bound
in office, to take cognizance. The act is not to be
at a point to the advantage or disadvantage of either
the parties, it must be known. It is not so with the L.
of Mr. B. - and it is bound to know it, as being applicable to all
mercantile countries, & being such when the same,
unless varied in some local jurisdiction by some stat. or order.
- & what the L. is to other subjects, this is to Mr. B. & mer-
cantile transactions.

The L. & W. differs from the C. L. in many respects.

1. By the C. L. no remedy will be so regulated as to converge away as to give the holder a right of action in his own name - by the L. C. it may. There is however 1 exception to the C. L. that 1 man can't convey to another a right of action - & this is in the rule of courts, where 1 covenant for years of 1 is years & apices, to the covenant, his heirs & apices - the court runs with the land, & any subsequent purchaser runs the original covenants.
2. By the C. L. a right of action can't be vested by 1 in another unless there is a privity of estate - but by the L. C. his estate runs - tho' it don't hold in all movements he appears.
3. At C. L. an action for a voluntary conveyance, can't be maintained by 1 man vs another. By this L. it may.
4. By the C. L. if the consideration ^{of a contract} is made, a deed can't be maintained without a subsequent purchase. By this L. no such provision is required.
5. At C. L. fraud in the consideration of a deed don't invalidate it - as an action may be brought for the recovery of damages - by the L. C. the least shadow of fraud destroys the whole contract.

6. It is to the point of consideration can be affirmed or any
 can't but a specialty. By the 2^d when a suit of a person
 is once underway, the want of consideration can't be
 moved - there are not 2 instances where the want of
 consideration can be moved - one arising from the
 state in these words, & the other such contract to do in
 fulfil of purpose. 1. B. B. 970. B. B. 1272. 2. B. B. 1384.
 4. B. B. 396

7. It is to the point of consideration - it is in execution &
 supposed to escape the other - it is taken from the same
 debt. the 2^d concerning the debt to be paid, by the 2^d it
 is in effect of 1 is not having as the other

8. 1 month in arrears of payment is a cause a cause
 der month.

9. By the 1st of 1 purchase good & right to take them away
 they are liable to the merchant. & the seller can't take them
 in his hands. the price of the merchandise of the buyer
 by the 2^d it is after a second bargain there is danger
 of a bankruptcy of the buyer, the seller may return the
 goods and so is liable.

10. When you are the owner and heard at sea, to make the
 ship all the freight & passengers must be the 2^d it
 is in the ship.

11. When you are the owner of the ship & it is in the
 1st of 1 is not.

12. At 1st if a person has notice of the taking place of an
 event, which is the 2^d requires to be given as of the
 more acceptance of a bill, to do so is a cause in what
 manner that notice is given. by 2^d it is the notice
 must be in a particular manner that is given as by
 law.

The things to be done at under the 1st of the 1st bill
 of exchange & the 2^d of the 1st bill of exchange. 1. The 1st bill
 3. The 1st bill of exchange. 4. The 1st bill of exchange. 5. The 1st bill of exchange. 6. The 1st bill of exchange. 7. The 1st bill of exchange. 8. The 1st bill of exchange. 9. The 1st bill of exchange. 10. The 1st bill of exchange. 11. The 1st bill of exchange. 12. The 1st bill of exchange.

Bills of Exchange

A bill of ex. is an order of payment in the full power
 one to another, binding him to pay a sum of money to a
 third party in whose name on the instrument and the
 names of such others may, but are usually for and to
 him in whose favour they are drawn as one of, & so
 long as they are directed to be paid to the bearer, in which
 case the bill is bearer payable to, & being a negotiable instrument.

In the face of the bill are 3 persons, the drawer, the
 subject matter of the bill, & who may have no application
 The drawer, or him on whom the bill is drawn, & the payee
 or him to whom the money is payable. Many persons
 may be concerned in a bill. For if the payee endorses his
 name upon it, & it goes into the hands of another, the per-
 son is called the indorser & the latter the indorsee. If the
 drawer assigns the bill he brings his application & endor-
 ses the acceptance.

The time when frequently occurs in these transactions it
 requires the time allowed the acceptor by statute, in
 which after the acceptance he may pay the money. In
 some countries he is allowed in others none - Half a
 year is half the time.

There are also days of grace, which is the time allowed
 the acceptor after the day of payment has expired. In
 France this amounting they are 3 in number.

Proving negotiable - These are negotiable bills to remain
 and under this head - they are several but are otherwise
 made to be bills of ex.

To constitute a negotiable bill it must be payable
 either "to order" or "to bearer" or eitherwise at the place
 stipulated in the name of the party with any other promise.
 There appears upon the face of a negotiable instrument
 2 persons - viz. the "maker" & the "payee" - the former
 who is not, are frequently called the drawer - &

shown in the place of the acceptor of a bill & the assignee of the note is the name with the phrase "I have been & am bound in both, and the same in point of obligation & for all purposes."

Indorsement of a note or bill transfers the power to receive the money together with the right to sue to receive it.

Indorsement is an act by which the person placing his name above upon the bill, which enables any person whose name it may come to put up the endorsement to himself or any other acceptor or indorser in his own name. Or without putting it up in any corner of the bill. & the vendor by doing it is entitled to sue as long as any person whose name appears upon the bill or as his immediate transferee the bill has not indorsed for the action is then founded on the principle of contract. The bill is indorsed & passes as a security that it is payable to receive an indorsement is an offer to transfer the bill of it - but such indorsement becomes a discharge as to the subsequent holder.

There is an implied engagement on the part of the drawer that the bill shall be accepted - & in order to show that the drawer on his original should be at variance is also implied that the bill shall be paid when accepted. If he not the drawer - If the indorser who gave in this case must be immediately liable.

But the holder is much bound - the holder of the bill is bound to accept it to present it for acceptance at the place of payment - & in case he does not, except some accident by inevitable accident he has no action on the name or indorsement.

But of the bill ^{or note} ~~or note~~ & indorsement, the holder must be immediately given to the drawer, who is not bound to name effects in the bills of the drawer, that he may make the bill - but if there are no effects named will be dispensed with. Notice must not only be

given to the owner by all those who have the right to
tend to subject - If the reason is, those who own the bill
may wish instantly to procure their money, as the owner
or his agents indicate.

Bank persons are not uniformly, concerned in a bill
of ex. As if it be a bank bill, B in N.Y. & in N.Y. is in
S.D. to L. in L. - Not wishing to disturb the owner
of B, pays the sum due to L. & then comes here to draw a bill
and requesting time to pay the amount of it to B.
These persons are most commonly concerned - the then
may be that L. & A. if A desires B to pay, he is a certain
sum, which B complies with the requirement & A endorses
the bill to L. Becomes 480. l. Sat. 30. 6. c. Was. 29.

A bill may be made payable at night at so many days
after sight, at so many days after date & so on.

It has been made a question at L. whether a bill was made
payable at a certain time "from the date" or "from the day"
of the date what was the effect of it - It was held
that the former inclusion of the latter excluded the day in
which the bill was drawn. But it was so by L. & others, that
it should rather exclude or include the day, according
as it gave effect to the intention of the parties. By the
L. & others, the day is always exclusive.

In Europe the old & new style are both now in use, the differ-
ence between which is 11 days the new preceding the old.
But that style must govern & regulate the bill, which
is used where such bill is drawn.

Bills which are payable at night have no days of grace
allowed them. Becomes 486.

Bills of exchange are of 2 kinds, foreign & inland. The latter
are not known to the L. & neither are they regulated by
the L. & W. but in Eng they are both to be placed on
the same footing.

In the U.S. a bill drawn by an inhabitant of one state on
an inhabitant of another is a foreign bill. In place of the
It is usual to draw several sets of foreign bills, so that

The many Draw Bills of Exchange

It was generally supposed that the carrying of bills was a profitable business & Mr. But this idea was never completely exploded. The reason is that every man who is capable of making other merchants draw bills of exchange can draw. R. L. Bird. 211. 1. Nov. 25. 2. Nov. 26.

An infant is not bound by his contract, even if he appears. Hence there is no such thing as an infant's contract. But such as are suitable to his station. Hence he is liable for more than the contract value to him. The question then arises whether an infant can bind himself for necessities by a bill of exchange. But as the case is not yet decided, it follows that he cannot be bound by a bill for necessities - even though it is expressed in the bill that he gives for this purpose - because in such case the price of the articles is not to be made a subject of consideration by R. L. 40. In respect to bills.

But if an infant's bill is endorsed by an adult, then the infant is bound by his endorsement. The infant is not liable on the bill.

The consideration of a note before it is negotiated can be gone into - not so with a bill of exchange. except as to the manner - the payee - R. L. 2. Nov. 26.

A firm cannot contract with itself by a bill of exchange. In those cases where the firm can make other contracts. R. L. 2. Nov. 26. 2. Nov. 27.

But is an unsettled point in law, whether a bill drawn separate from the H. on articles of agreement, with a separate main clause can draw a bill of exchange. It is agreed by all that the money count if the H. is furnished the money. If he has assigned the note, or is transferee of the money for a term of years - the only ground of the H. is liability is 1st the danger of impugning the H. is invalid

might. & find the drawer of his being imprisoned - but in the case under consideration he has abandoned all claims upon his person, & his count to this effect is allowed to be ruled. may he is bound by his act to relinquish his right to the benefit of his next party. But he is not that Ed. Haver. relied on his separate allowance. if he made his title generally on all his co's.

As the continuation of a bill is received from examination, the whole amount of it as nothing is to be recovered for it can be apportioned.

It was formerly doubtful whether a note payable to the order of another, was payable to the person himself - by settled that it is. 10. & 11. Mod. 286. 1. Show 8.

There has been a difference of opinion as to bills payable to bearer alone. but now such a bill is the same as if payable to C or bearer, & may be indorsed the indorser subject to 2. Show 23.

It has been said that the indorser could not come upon the drawer, on whom they are except his immediate indorser. 9. & 10. 211. 1. Salk. 128. Ed. Ray. 180.

But he now settles that such a bill, has all the qualities of 1 to C & indorser. indeed more for it passes by delivery the first instance. Bl. R. 535. 9. Bur 1560.

When a bill is payable to C or bearer the holder may recover in his own name or can indorse to a third person. If the holder of a bill comes into possession of such bill by any means, he must surrender on or before an act and if it comes to him there the responsibility of any of its antecedent holders, his attorney, then arising from the bill, as if it were his own. Bur. 452.

The Characteristics of Bills & Negotiable Notes.

It is a well known instrument which is made or issued. & all the inquiry can be had into the nature of those of the party. & the nature of the security is an act of approach & determination that it denotes a commitment. 1. 234. 612. Bur. 1649. 1669. 1. 2. 441. 2. 2. 989. 2. Ray. 1788. Co. Litt. 215. 9. The 213.

It is not an instrument in respect to the occurrence of the illegality, at the same time, this is a bill of exchange. But it is not the same as the bill of exchange, it is a bill of exchange, after negotiation it is a bill of exchange and is engaged into. Many many notes have no force at all.

A good bill must have certain qualities - 1st It must be for the payment of money, only. 12th. B. N. B. 277. Swift 254.

2nd The credit must be a general credit, & not confined to any particular person. To whom A draws a bill on B, in favour of C, to be paid out of his substance.

10th. B. N. B. 274. 276. Swift 254.

The bill was held to be not good, for he had no duty to pay it out of this fund. 12th. B. N. B. 277. Swift 254.

When the drawer was directed to pay a certain sum out of the money belonging to the drawee's business, he was held bound on the same ground. 9. Wils. 107.

So also when the drawer was directed to pay the sum out of his money, as soon as he received it. 12th. B. N. B. 277. Swift 254.

Altho a particular is mentioned, if it appears the credit is general, the bill is good. To whom a bill was drawn payable on the 1st of May, out of the drawer's half pay, see in the first of force.

But a promissory note payable to or on account of a particular person is good, & may be negotiated, for this signifies the manner merely in which the maker means to exchange it, but still he is liable at all times to pay the money. 10. Bayl. 148.

3rd The bill must be payable at all times, & not deferred on any contingency. Thus when a bill was to be paid out of the drawer's right pay when due, here he is obliged to pay whether it will ever become due. 10. Bayl. 1503.

To whom the order was to pay, of certain money, contained in a letter now completed with, he was held to be the

Of Acceptance.

The acceptance of a bill is an engagement of the drawer to pay the contents of it. If the notice thereon is an indication of such engagement the common mode of acceptance is by writing on the bill & this writing may be of almost any words & yet still bind the drawer as acceptance. & indeed where the bill is presented & no objection is made to the receipt of it, it will be construed into an acceptance. Acceptance may also be proved as well as by writing, the proof only varying - & it may also be by any collateral act, as the receiving a letter. *Str. 652* *Burr. 1674.*

A promise to accept before the bill is drawn will bind the drawer. *Hard. 75.*

The acceptance of a bill is usually between the time of drawing & the day of pay. *Burr. 63. 1. c. 11. 777.*

Yet it may be presented after the day named in the bill for pay is expired, & notwithstanding be accepted in the usual form. *1. Talk 1279. P. D. Ray. 364. 574.*

When the drawer refuses to accept or is absent, a ^{supp} drawer may nevertheless accept for the honour of the drawer. *Becoms. 556. 5.*

But this affords no presumption of the drawer's liability, & effects are in the hands of such acceptor.

An acceptance is in fact a contract made finally with the holder, but it implies in it an engagement to pay all subsequent & present holders, the amount of the bill.

As there may be an acceptance before the bill is drawn, it of course must be made to the drawer, & the acceptor then becomes liable to him. *Camp. 572. 5. 1. c. 11. 778.* ^{as drawn in} ^{must} ^{any.}

Yet if there was no consideration or such engagement, the acceptor could be subjected on the ground of its being used as a factum - but if there are such circumstances accompanying the transaction, as to induce third persons to give the bill a credit, the acceptor must be liable. If the drawer has no effects in the hands of the drawer, the acceptance is not binding - unless it should have a tendency to

induce third persons to rely on such formal acceptance.

Any general words of acceptance on a bill, are an acceptance according to the ^{mean} tenor of it, & extend to the holder to the whole amount.

It has been said that a bill could not be accepted, sent according to the tenor thereof so long there may be a special acceptance & would bind per totum. 1. Str. 214.

The acceptance may also vary the terms of payment that are specified in the bill. Bacon, 481.

The acceptance of the bill to be paid by a stranger, gives the acceptor no discharge, 2. Str. 1198.

The acceptance to pay a part in several instalments is good - this may be of in money, & the rest in goods. 2. Str. 1171.

So the acceptance may be conditional as to pay on the arrival of a certain ship. Yet in all these cases there must be a protest. 2. Wils. 2. Knight. 278.

If there is an absolute acceptance of the bill & a protest on detention the condition is of no force, for when the acceptance is in writing the condition must be in writing about it; in this respect the rule is the same as at to a protest on detention never being binding when the endorsement is in writing. Bampf. 278.

When the acceptance is conditional & the condition fails, the acceptance becomes absolute. Bampf. 271.

Now this to be an acceptance when the drawer & drawee the bill with one bill to morrow. "I will accept it. But when he said 'draw the bill with me.' I will not. I am my account with the drawer & accept accordingly." treated to be no acceptance. Bacon, 488. 4. L. 118. 2. Bac. 610.

Any words which are the substance of the promise are a charge upon the acceptor, as "will be paid" & "will be paid" & the like. But when of the writing is so foreign to the subject. 2. Str. 1170.

If the drawer writes to a stranger to pay the bill, he is an acceptor on the part of the drawer. tho' the stranger is not paying it. But if the drawer is referred to for satisfaction, & the

former draws a bill on the latter, to know if he will accept, this is not an acceptance of the original bill.

1 R. 269.

In a singular case see 3. Burr 1669. On this, A merchant drew a bill in favour of B on C, and he to C to know if he would accept, & promising to give him bills on a house see & on C accepted the bill of C & sent the amount of it to the house in L. to know if they would accept a bill of exchange it came to A. the house accepted & before it was accepted, & the house refused to accept the bill - but that is as clear as the house in opposition to which it was made that this was a misdirection, that the bill of C was paid in full the promise to accept, & that consequently this could not induce it - but the A held that C drew bills into money by the promise & that he should recover.

Of the Transfer of Bills.

Bills that are payable to any bearer or to the bearer or may be transferred by indorsement (Burr 1826. 1. B. & R. 588)

But when a bill drawn in favour of A or order there must be an order, that is an indorsement by A before it passes by delivery.

Indorsements are of 2 kinds, full & blank indorsements. An indorsement in full, is an order to pay some particular person. Doug. 611 612.

A blank indorsement is when the name of the payee or holder is placed on the back of the bill, & any one into whose hands the bill may come, may fill it up as he pleases.

But after a blank indorsement is once made, the bill passes by delivery - but if he finds up there must be a new indorsement.

The case of transfer by delivery not is liable except the immediate transferee - & he is subjected an L. L. person, & the measure of the priority of court.

An indorsement in blank may be settled at at any time after the bill has been paid. B. Burr 1826. 1. B. & R. 588.

A blank note may be indorsed & the indorser shall be liable for any sum with which he is paid. D. Reg. 52. l. 1. & l. 11. & l. 12. & l. 13.

A blank endorsement is one which is so indorsed as to make it a form of allying. D. Reg. 52. l. 1. & l. 11. & l. 12. & l. 13.

When a bill has been accepted and negotiated by indorsement it can't be limited in an indorser so as to restrain its negotiability. Buss 1225.

So the record order is one of many in the first instance to make a bill negotiable. yet tis not necessary that it should be inserted in the indorser with the 52. Buss 1226.

The indorser's obligation may be further limited by limiting the negotiability of the bill. As by limiting the payment of the bill to the use of the indorser. Yet this restriction must appear plainly in the instrument. Buss 1232.

If a bill is paid and many are indorsed afterwards indorse, the indorser can't recover of the acceptor for he should look to the nature of the bill.

An infant is never liable for any endorsement he may make. but all the binding as well as the personal parties must be taken. Buss 1235.

When a person has obtained possession of a bill, for a bona fide consideration, he can recover on it how much so ever of money there may have been in the instrument at his death. Buss 52. 1580 in the 8th Reg.

If there are 2 payers of a bill who are in partnership & but 1 indorser at his death, both 1. Part 92. l. 1. & l. 11. & l. 12. & l. 13.

Yet if they are not partners, both must indorse for the joint account. but the indorser of 1 is binding as to the 1. Buss 1237. in the 8th Reg.

When 2 persons who are not partners draw bills that are payable to themselves, the transfer of 1 is not good. Yet it would seem otherwise for the bill is then made there not as partners. Buss 52. note. l. 11. & l. 12. & l. 13.

Assignees may indorse. So also may enter the bill of their testator. but in the latter case the entry can't be made without

those only are liable, who put their names upon the bill.
1. H. 347. 10. Mod 318. Brew 1225.

It has been made a question whether by the L. Wt. the person
in a letter, for and to his order, that he can sue the
L. principal must be brought by him who has the legal
title. South 5. 2 Vent 309. 2 Ashm 87.

Yet to hold that in some cases the party, who must bring the
action - but this is only when the trustee or legal proprietor
cont. ch in the case of an estate who was liable as a promisee to
his estate, in favour of a third person - here it is necessary
the stranger may sue the estate upon the promise, for otherwise
justice would fail.

A bill can be indorsed in part to 1/4 in part to another, for
it would tend unnecessarily to multiply actions. South 466.

Of the Engagements of the Parties

The engagements of the drawer & indorser are all conditional
tho they extend to every subsequent holder of the bill. Brew 569.
The drawer engages in the first place that the owner has a
good title to the funds - that he will accept that he is responsible
- that he will pay. A failure of either of these engagements
renders him to an action - & even tho the acceptor afterwards
pays the bill, tis no defence for the drawer, tho it may go in
mitigation of damages.

The signing & delivery of a blank bill carries with it an authority
to fill it up for any sum, if the drawer will be bound.
1. H. 36213.

If the bill is not accepted or presentment or is not paid at
the time, & it becomes due the notice is given to give in
mediate notice to the drawer, that the latter may withdraw
his effects from the hands of the former, & the acceptance of this
notice excuses the drawer from all liability - if there are
indorsers they must have notice of the notice intended to be
given to them, in order that they may have an opportunity to re-
ceive themselves from the drawer or former indorsers. 1. H. 36
167.
167.

Holder can't create a debt in the drawer, for this has always been in existence, & may not be extinguished by the fact that it prevents the entire paper coming on the drawer, until he has paid of receiving from the other parties.

The liability of the indorser is the same with that of the drawer as it respects the subsequent holder. L. & H. 441. 494.

1. 4th. 189.

The drawer is discharged by nothing but the actual payment of the money, & a judgment is here that has the holder of an action in the indorser. 3. Nov. 86. L. & H. 441.

This however is not practised in the L. & H., for when a person has several securities, any or all may be used & judgment is made till there is a payment. But for bonds this is not so for the damages are not certain & the act allows on the ground of holding, to prevent litigation.

A notice is necessary to obligate the drawer & indorser, the holder must also not only present the bill for acceptance but if that is refused present it for payment, for the drawer may reject of the non acceptance & his present is the best evidence things to former situation.

The manner of Notice.

If the payment of the bill is limited to a certain time after sight, the bill must be presented on time or there can be no payment & the law is that this must be done as soon as it can with any convenience.

When the payment is at a certain number of days after date, it is usual to present it between the date & day so present but this the law does not require, for it may be presented at acceptance & present at the same time.

If the holder should give a bill of this compliance to a party as his duty to present it immediately after the receipt of the notice to his principal, but for otherwise the action is chargeable.

If the acceptance of a bill of exchange varies from its tenor

as it may, notice must be given in the same manner as if there was no acceptance.

After acceptance there must be a demand for payment. This must be made on the first day of grace. An insufficient time that it may on the ninth day be protested you must pay to. Id. Ray 748. Str 829. Beames 461.

The holder must give notice to all the persons parties to whom he intends sending. But as he has been already he is not bound to give notice to any but the drawer. This in such case his money must be consigned to him & cash. (Burr 2670. 1. 1. 182 712.)

If however an endorser not having had notice, & no money to pay, he is not liable for the same. And as he is not liable, he being under no moral obligation to take up the bill.

Protesters, notice to draw with an as much notice to day of grace as bills of exchange. 1. 1. 182 4. 60. 138.

Bill must be offered for acceptance at the usual hours of business, when persons are to be found at their offices, stores.

Notice must be given when there is a refusal to pay. This must be given when there is a refusal to accept. If when the money is not to be paid. Str 841. 118. 1. 30. 2747. 547. 1. 1. 182 170.

The notice is always to be demand from the holder of the bill. It is insufficient if received in any other manner.

Where the parties live in different places the notice is always to be dispatched in the next post. But if they live in the same place the notice must be in a reasonable time & to what is a reasonable time is to be ascertained. 1. 1. 182 1677.

Time, generally considered a matter of fact & determined by the jury in each particular. But it is now to be treated as a question of law. See the 1. 1. 182 1677. There is no case when more than 24 hours have been allowed. Both ⁱⁿ ~~in~~ the same.

Notice or has been absconded coming from any other than the holder of the bill, is not legal on the ground, that the drawer is not bound to give it credit.

It is unnecessary to give notice where the drawer has no interest of the drawer in his hands - for in this case the value of notice falls 1000 500, s.

But this does not render it unnecessary to give notice to the endorser. for he is no consequence as it respects him whether there were effects of the drawer in the drawer's pocket. 1000 500, s. 200, s.

Yet as it can may happen in which the drawer would sustain injury from the want of notice, tho the drawer has none of his effects, & it appears under such circumstances that the bill wants to decide that want of notice would be liable to damages.

No particular form of notice is required as in inland in the last or foreign there is a prescribed form. 1000 500, s. 170.

Upon refusal of acceptance when the bill is offered for that purpose, the holder acquaints a notary public with the circumstances, who immediately demands acceptance of the drawer, & if refused notes on the bill the of refusal, makes protest by the refusal, in which he states the holder will look to the drawer or endorser as the case may be for the damages. This protest must be signed by the notary himself or a clerk or agent, but must be done by the notary himself.

A certified copy of the protest is sent to the next vessel to every person intended to be charged.

The protest is conclusive evidence of a refusal & no other proof is required to prove the fact. 1000 500, s. 171, 200, s.

That the notice or protest was received in the vessel can be established by proof, & the witnesses must not acknowledge that the letter was sent by the next post, but he must answer to the contents of it.

Where the bill becomes due it must be presented for

payt in the same manner as if it was accepted, & upon refusal the protest is to be made, & the same circumstances attend as before, except that the bill is now to be endorsed with the protest to the drawer. Because if the drawer can't be paid, protest is to be made & notice given as before to each of the preceding parties, to whom the holder intends to sue & pay payt of the dishonoured bill.

When a bill is not accepted necessary to be done it must be protested.

So also a bill may be protested for better security, as when it is payable at a future day, & the acceptor is in failing circumstances, the holder may ensure security, & if none is given the bill may be protested for better security. 1. 2. 3. Bay 743.

If all these acts have been performed in a regular manner, the holder is entitled to his action as the drawer & indorser, in which he'll recover principle interest & charges. 1. 2. 3. Bay 743.

The costs include the expense of protest & the charges of the law. As to the rate it would be the rate of damages, but by the bill more than the interest simply, is allowed - the rate however is different in different countries - but in each is established by general usage. In those states to the westward of Ban. 20, & in those east 10 per cent is the rate of damages. But in mercantile transactions the rate of damages are never inquired into - & when there is no established rate to damages, the trouble & expense of the holder may be deemed & therein the general.

Ireland bills of exchange the principles of the b. l. stand on the same footing with other b. l. countries, & of course there can be no recovery of damages, & no notice is required in any instance. Bay 456. 466.

But in Bay they have been placed by 2 different acts upon the same footing with the former with the having no such statute such bills remain as b. l. of bill however from another

300 *Land Merchant.*
State, is to be treated in every respect as a foreigner with.

Non acceptance is refused in the dinner, & a stranger ac-
cepts for the honor of the dinner. Still the bill must be
protested & value given.

When the bill is accepted for the honor of participation in
donors, the acceptance is bound to the subsequent behavior,
January 1877.

3. The same after refusal wishes to accept having that the person who has accepted for the house of a Union, is not thereby doing a business. 58x2.

The Obligation of the Acceptor

he is not able to pay the bill to any person, into whose pocket
it may come. His refusal to pay a bill to him, is no excuse.
Yet this action can't be maintained by the Drawer, as if he
had effect in the hands of the acceptor. But then we our
selves don't want to know that there was accommodation
or acceptance. Six months they are entitled to receive on
the acceptance & all under 1. May 1855.

Upon the other hand the Ducum has no right, & says the bill
he may by an action as the Ducum recover the stolen sum
Ducum by the bill.

the holder of a bill may by parcel discharge the acceptor & deposit on the responsibility of the drawer. but this could not be done on the principles of B.L. - perhaps a right of action has once occurred it shall not be released by parcel in ^{Bank} ~~Bank~~ ^{Int.} ~~Int.~~ & Eng.

Any indulgence shown the acceptor by the holder, in attempt-
ing to get the amount of the bill from the issuer or indorser shall not be construed into a discharge of the debt
on.

But if the Donor keeps a heart, the acceptor is 1:2 hungry
for as much as is paid. 1 H. 36. L.H.

To insure of tenor shall examine the necessity from his
activity, solely to within the operation of the stat

of limitation, cut at interest.

Transitional acceptance made. the acceptor promises the holder in trust in it as an acceptance 1 S. 2. 762. 7.

It was formerly held that a recovery of part of the debt from the acceptor discharged the drawer. 1 S. 2. 762. 7. now otherwise determined. 1. 1110. 262.

It has been a question whether a bail who satisfied a just debt obtained by the indorsee as a promisor, enters the indorsee can maintain an action on it in the indorsee. As where A gave a note to B. B. indorsed it to C. by whom the note was paid. D. became bail to A. & C. recovered justly of D. the money & instituted an action in the name of C. on B. the indorsee. 1. 1110. 262.

The objection to the first principle of the action is that to the universal effect has been insisted. That it held there was an end to the negotiability of the note & that the bail must have his remedy at law as the maker of the note. If the case would have been the same had the drawer interfered in person.

It was formerly held that when the drawer requires to accept as pay, the indorsee is bound to the drawer point. But this is now excluded. If either drawer or indorsee may sue at the option of the holder. 1. 1110. 262. 541. 2. 1110. 662.

The Remedy of the Parties.

Whenever the primity contract is between the parties, the remedy is the proper one to be pursued - as between the payer, the drawer, the acceptor, the indorsee, & his immediate indorsee. & also between the maker & payee of a promissory note - for in all these cases a consideration has passed between them. But not so between the holder of the note and the acceptor - for there is no primity of contract. Hend. 565. 1. 1110. 262. 1. 1110. 262. 1. 1110. 262. 1. 1110. 262.

The Method of Drawing and Bill
of Exchange.

The modern mode of drawing is every different from the ancient. Formerly, the bill was set out at full length in the declaration, under the idea that laws were of ancient custom. Ed. Ray 145.

But the bill has now incorporated into the bill the kind, the custom is omitted, & the bill is merely stated to have been made according to the custom among merchants. 32 L. J. 110 111. 112.

In relation to the custom at length however would not make the declaration, the law would be void. Ed. Ray 149. 110 111.

As the party which entitles the bill to money must state—as that the drawer made the bill & directed it to the drawee, ordering him to pay the contents of it to the payee. In stating, the facts however need not be tied to them legal operation. 1 L. J. 113. 114. 115.

As of a bill is payable to a particular person it must be declared as so payable to him, for the law considers it because the hand of such particular person is not required.

If it draws a bill payable to the order of B then the drawer is payable to B himself & may be so declared on.

So too if a note is made in favor payable by B signed by him, it may be declared as a several note.

Where a joint several note is given by two men the law may be as if it were a several note but if more than two men the note must be declared as such. Ed. Ray 145. 110 111.

112.

If however an obligation is joint it must be declared as so. But if it is not, it can only be taken advantage of in a debt suit.

If a bill is payable in a state law from the date it must be declared to have been made on the day of the date. 112. 113. 114. 115.

It is, however, the A. that the place in which the bill was made should be averred. & now for the note up for which it might be sufficient. But it is of no consequence that it is the place where the bill was actually drawn.

When a bill is payable at a place, the name of the place where the bill is made must appear, & that name must be stated in the declaration.

Every bill that is drawn must be subscribed by the drawer. It is, however, unnecessary to aver it to have been so subscribed, his sufficiency that it appears in evidence. 2. D. Ray 196. 2. Mod. 346.

But of a note it is sufficient to state that it was made by the spot, as if done by the agent to the same. Yet if his name and he have been subscribed by an agent, it must be stated truly as there will be a variance. *Fin.*

In the case of a partner who makes a note in the name of both, it may be stated to have been made by both, it appearing that they are in partnership.

Where an action is brought on a bill where there are several sets, it is unnecessary to state that the other set was unpaid, but the bill must be set forth as it is. 2. D. Ray 86. 1. D. Ray 211.

It must in all cases be averred that the drawer delivered the bill to the payee. Also if the bill is payable after sight that it was presented for acceptance. But if payable after date it is unnecessary for it may it may be presented for acceptance, & kept at the same time.

When the action is brought on the acceptor, the acceptance must be stated, & generally according to the terms of 2. D. Ray 86. 1. D. Ray 211.

The indorser, in his action must state all this, & that the payee is indebted to him.

If however there are several special indorsers, the last indorser must aver to each an individuality, & then the whole together in order to show his own interest.

When there are several indorsers, they are all to be stated.

to the holder of the bill, the acceptance of which is necessary to the bill.

When the bill is payable to bearer, no invoice need be stated, tho the bill has to be endorsed, his acceptance, for the bill to bear that he was the bearer.

In the case of the bill, he must bear of delivery. But this need not be done by the invoice, for the endorsement supplies a delivery.

When the action is brought on the bill, no invoice need be given, tho the invoice is necessary to the proceedings, and the invoice must be shown. It is then that a bill and invoice are made, as the invoice, that is, to accept as that the acceptor refused to pay, that notice thereof was given, & also the manner of the notice, which must be stated as his not given.

But no notice is stated to have been given if the invoice is omitted, he has no share in the invoice, but if the invoice is actually sent to his place, of the notice is not necessary, the receipt of it must be proved by evidence.

The invoice in an action on the bill, and the invoice is necessary to the proceedings, and the invoice is necessary to the proceedings.

It has been said, a bill is not a bill, unless it is accompanied by an invoice, and an invoice is not an invoice, unless it is accompanied by a bill. This is not the case, for a bill is a bill, and an invoice is an invoice, and they are not necessary to each other.

Notice must always be given in the case of a bill, and the invoice is necessary to the proceedings.

The holder of a bill is not liable to the bill, but he is liable to the bill, and the bill is necessary to the proceedings.

When a person gives a bill, he is not liable to the bill, but he is liable to the bill, and the bill is necessary to the proceedings.

When the holder of a bill is not liable to the bill, but he is liable to the bill, and the bill is necessary to the proceedings.

money laid out & expended for the use of the gdt. 10.
R. 264.

It has been made a question not whether the plffs after stating
as above, must raise an affirmative to Ray 593, 598. 1. Salk 128.
Carth 502.

It has been decided in favor to the negatory—but the judges think
incorrectly—for quere here case the plff plead the general from
non affirmative 1

Many instruments are given upon mere consideration, which
are not in the form of bills or notes. & are not negotiable,
the binding between the parties. 3. T. R. 174.

The same mode of recovery in such case is by action of
assumpsit in support of which the instrument is given in
evidence. At least in the hands of the payee is always the
sumptuous evidence of a debt due from the drawer—but
this presumption may be removed by the enquiry into
the consideration.

Whoever transfers a note or bill without incurrence
on the principles of the L. 11 never binds. not as
between the immediate parties the transferor & trans-
ferree—an action will lie upon the implied warranty.
At least the action is grounded upon the original debt for
which the bill was transferred—yet is the holder
not bound to show the instrument transferred as is
in defence. 3. Wils. 257.

The holder of a bill has as many persons for his security
under the transfer & acceptance is bound to show the
original instrument upon point of the debt he may take
out where is the consideration for the costs not for the costs
only. 2. 3. R. 257. 2. Wils. 115.

But if the debt & costs in all the actions are paid after judgment
is rendered & before the taking out of the exon the plff has
plff has strictly a right will not permit him to take out
costs—& if he refuses it will be construed for a waiver
except. Str. 515. 6.

A man a bill in favour of B. who accepted it & B. indorsed it and it came to D. & D. sued B. the acceptor who was committed to goal, & afterwards legally liberated. D. commenced his action as A. the drawer, & recovered upon the ground that the discharge of B. was no satisfaction of the debt. After it has thus been the subject of an action in his behalf, as held good as the acceptor. 5 T. R. 825.

Non assumpsit is the general issue to this action. Many of the recoveries have since been made upon the bill in this form. It is proved his debt under the common law, & was proved as the other.

Evidence.

All the necessary allegations must be proved in the bill in order that he may support his action.

The holder in his action as the acceptor must prove the hand writing of the drawer - but this is not intended as evidence of the acceptance - for the acceptor is supposed to be acquainted with it - & by his acceptance as the bill requires it. D. Ray. 445. Str. 946. Burr. 1858. 1 T. R. 570.

This principle is doubted by D. Thurlow, but he is overruled by argy.

But when the acceptance was made without seeing the indorser, the hand writing of the drawer must be proved, for neither can the acceptor be not prevented from showing the indorser to have been paid.

The holder as is the drawer is bound to show his only evidence by proving the hand of the indorser.

When the bill is payable to bearer the holder to charge the acceptor need prove the hand of the acceptor only.

When there are several blank indorsements, the holder may waive the necessity of as many as he pleases by filling

a prior indorsement with his own name, & this releases him from the necessity of proving the names of the indorsers that struck out. But a special indorsement can never be waived.

The acceptance of a bill does not move the hands of such indorsers as were made previous to the acceptance.

1. 2. 654.

If the acceptance was conditional the Plff must not move the hands of the acceptor, but also the want to have ascertained on which the acceptance depended.

In an action by the indorser vs the indorsee, it is sufficient that the Plff move the hand of the Def alone & in these cases it is not necessary to prove any demand on the drawer - for this indorsement becomes a demand to his indorser. See 6 B. & C. Ray 173. Str 451. 5. 1. 4 B. 313.

The liability of any of the parties is not sufficient to lay the foundation of an action. It holds as the bill must have been actually satisfied by him who claims of the drawer, in order that the latter be subjected, & this thing must be evidence. See Ray 173.

The drawer in his action vs the acceptor must prove the hands uniting of the Def - a demand of pay of the bill & refusal - & that in consequence thereof the Plff has paid the bill. 11. Mod. 96. 1. Wils. 85. 185.

The acceptance of of the drawer being presumptive evidence of effects in his hands, is sufficient to entitle the Plff to a recovery, & therefore the burden of proof lies on the Def to show that he had in his possession effects of the drawer & when this appears the Plff need not recover.

In the action of the acceptor vs the drawer, the hands uniting of the Def must be proved - pay of the bill, or that which is equivalent thereto - & that the Plff was in possession of no effects. 3 Wils. 18.

But when the action is lost by one who accepted for the honour of the drawer, he is not bound to show that he had no effects - for this goes to the drawer's loss.

Noted without the bill is sufficient evidence tho' it is ~~not~~ customary to produce it.

A bill is not evidence for non acceptance, but for receipt only.

When a party has signed his hand he shall not sit in a defence of forgery by similitude, but the proof must be direct.

Str. 1684.

And when an action has been brought & it is necessary to prove the hand writing of another the proof must be direct. But where the hand of the defendant is to be shown, a variety of circumstances may be adduced as is usual in such cases.

But where a man indorses by another the hand writing of the agent & the act under which he acts must be shown. Str. 1684.

This act may be derived from custom, which if sanctioned by the principle, as by having bills so indorsed will bind the latter & evidence of this fact will be conclusive.

In cases where protests have been made proof that the use has been given must be had, & this can be established in no other manner than by evidence of its execution in the usual & the presumption that truth is more than in such cases.

The hand writing of the maker of a promissory note need not be proved upon a writ of inquiry, when the debt is made default for the default acknowledges it. 3 B. 301, Str. 1189.
2 B. 748.

The want of consideration in a negotiable instrument can never be given into, except as between the parties.

Of the Illegality of Bills & Notes.

The illegality of the consideration will as at L. P. destroy the contract as between the parties. But it is a L. P. of the L. P. that as between others it shall have no effect.

When the illegality of the consideration first appears upon the instrument it may be specially pleaded & given in evidence.

under the general law. 9 T.R. 554. 1 B.R. 445

If the illegality arose from a positive stat. & parties enter into a contract in the stat. & agree to pay an unlawful consideration neither are bound - & if I pay the debt recover of the other - still if this part of the money was the consent of the other he will be liable. 4. Bosc. 264. 1 B.R. 445. 3 T.R. 515.

As now settled, tho' it has been said a question, that a foreigner can become a natural citizen for the value of goods which were sold, for the purpose of being smuggled out of the country the parties were natural citizens no recovery could be had. Scarf 351. 9. T.R. 584.

When without a consideration or with a bad one has been negotiated, the bill must be affected by it.

But to this there is an exception for where a bona fide stock exchange an endorsement obligating something on a certain description, which are made for such consideration as can, then pointed out to be valid to all intents & purposes, the instrument by negotiation can never be a good - for it would be contrary to the stat. to say that by a transfer they could become binding. Dray 646. 5 T.R. 700. 1 B.R. 445. 6 T.R. 356. 2 B.R. 627. 1 B.R. 274.

If the description of stocks are those so many & passing but an indorsement on such an instrument can maintain an action - the indorser for he only warrants the nature of the good. & if it proves not so, this fact will entitle him to a recovery.

A bill may be indorsed after it becomes due but this is not, according to the course of proceeding in trade & under these circumstances it may be impeached for such a deed is offered for fraud, that it wanted be rejected so that there are the same passing, with bills which have been presented & accepted in the usual manner. Hyd. 289. 4.

Bank notes, Banker's (ask) notes, & receipts on Bankers
There are a class of instruments which are sometimes treated
as money & as cash. They are b. to pay all b. & there
has to be the legal.

Bank notes are not a tender tho they circulate generally
(Banker's notes) receipts in this way & in this country
where we have adopted them as cash - but a demand
of pay^t must always be made within a reasonable
time or even less which may arise from the neglect
with fail on the holder. 1. P. 1. P. 1.

What is a reasonable time is a question of b. the answer
will be governed in a great degree by its own character
stems. There is no stated time in the paper which will
operate for ~~some~~ equality in every case. But there
is the longest time in which the b. have allowed a re-
course. Str. 31, 6 580, 1258, Beane, 462, 582.

Banker's notes are all payable in cash to bearer at the
banker's or demand. 5. P. 1. P. 1.

They differ from bill of ex. in this respect, we can
of non pay^t them as protest. Bur. 159.

When a bill of ex. has been accepted & the exception ab-
sented, it has been so that, the bill must be presented
for pay^t - but its nature otherwise determined as it
must be protested.

When the drawer or endorser is a bankrupt it has
been held that notice is not necessary.

If the drawer absconds no notice is required but if he
has left an agent or a servant. Woods v. W. W. W.
Exp. 8516.

sudden death will excuse the holder from giv-
ing immediate notice - but the estate in the latter case
must attend to it as soon as possible.

The non acceptance of a bill gives the holder a right of
action on the drawer ^{except for} ~~unaccepted~~ ^{defect} before
the day of pay^t arrives. in Maynes & Lang.

That it is never discharged by the transfer of a bill, yet it has its operation - for it is a suspension of the right of action, for so long as the bill continues in effect. *Ex p. W. 166.*

It was formerly a question whether a receiver could be held on a bill payable to a fictitious person. According to the R. law down the hand of the incisor must infer and that the holder may show the entry under which he holds - Has the original holder to give the bill negotiability, endorses the name of the fictitious person it would be impossible to prove the hand.

After various decisions it has been settled that no answer can be had in the l. course - i.e. that the bill is a bill payable to the bearer & as such must be received upon the assumption that the payee to be a fictitious person, he is bound by this circumstance, & he is always held on whether he knows it or not, provided he has given the incisor entry to draw in that manner. (see *Section 10* Kyd on bills 209, & where the question is treated of at length. *Walt. & the receiver*.)

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San Merchant.

Insurance.

The second branch of the L^t W^t which is as to be covered is that of marine insurance. This as a part of the L^t W^t is not confined to any one country, the different countries there are different usages with respect to it. The customs however the L^t is generally the same thus the U. S.

The Eng. L^t W^t has been generally accepted in this country (but is) there are several states regulating it, there has been in considerable difference.

Insurance may be defined to be a contract of indemnity, entered into between the parties, in which one the party of a ship related runs by L^t he is insured by the other in the happening of any particular event.

He who insures is called the insurer & sometimes the underwriter he to whom the insurance is made the insured. That which is given to obtain the insurance, the premium, & the instrument by which the parties are bound a policy of insurance.

It is a principle of the L^t W^t, that the person insured must have an interest in the thing insured, for otherwise it is a mere wagering contract. But of this doctrine there were formerly exceptions in Eng. but by the Stat. 13. Geo. 2. they are prohibited.

Insurers will not always at L^t initiate an instrument - but in a policy after the least adorning are the part of the insured, with entirely destroying the insurers liability, & indeed the insured may demand as much in one at once as in actual reimbursement.

Who may be insured.

All persons & subjects are entitled to be insured, also the property of aliens, if there exist no contrary rule in the nation. It was formerly held in the English L^t, that there could be made on the part of alien enemies; this however was

at various times mentioned by temporary stat. in 1748.
the making of which was opposed by Do. Hard & Mansfield.
1 Key 31. 1. R. 84.

The question at length arose whether the alien could main-
tain an action on his policy as the ins. - Has he could
not maintain an action for other causes, no reason appear-
ed why he should in this - here was decided that in such
case no recovery could be had. 6 L. R. 23, 35. Buss. 1784.

But this does not prove that an action can be maintained
after the war. Buss. 1784.

As a R. that an alien friend residing in an enemy
country, tho in friendship with an alien enemy may
sue & recover so far as his own right is concerned. 6 L.
R. 619

When the policy is legal on the face of it the C. will never
grant a new trial to let in the ³⁴⁵deft. to show that it was
illegal. 1 L. R. 84. 1. Buss. & P 355.

Who may Insure.

By the 6 L. No any might be an insurer - but in Eng all
companies except the royal exchange, & London Ins. company
are excluded by stat. But all persons in their private ca-
pacity & those corporations which are not incorporated
for any particular purpose may insure. 2 H. R. 378.

But if an individual who insures has a secret partner
such secret partner will never be liable for any
that may happen, & the acting partner only can be re-
sponsible. 6 L. R. 565.

The Subject of Marine Insurance.

Thechaudone which includes all kinds of goods—ships which signifies vessels of every kind—It ought to be that which a ship carries by carrying goods—It is the interest in bottoms, in spontaneous goods.

But there are articles or articles in certain situations, that are not the subject of marine Ins.—as goods which are to be smuggled, or such as are prohibited to be carried out of the country—a police on articles of these descriptions would be void. Law. 938.

It settles in L. 938. that the revenues of a foreign country are not to be regarded as contraband to evade the revenues of another country, the French revenues affect to contraband as void. Part. 938.

Ins. on a voyage to a colony of another country, void, if commerce with it is made illegal or Ins. is prohibited.

So also if any article is prohibited to be imported or exported in, because it is illegal.

Articles contraband of war, which are arms, ammunition, possibly horses, & naval stores of all kinds, not to be carried. Vattel. 504, §. 9. Book. 2. §. 1. 1. 1.

Provisions are not so considered unless the place to which they are to be carried is either besieged or blockaded. This is a L. of nations operating on all neutrals.

If a port or country is blockaded by a proclamation or decree only, without the aid of ships, an intercourse to that country is void—If a vessel in violation of the decree is taken, still the intercourse is lawful, for this commerce is not illegal by the L. of nations—It is only considered so by that nation issuing the decree. But when a commerce is illegal by the acknowledged L. of nations all policies on that commerce are void.

In an actual blockade the liability of the insurer in case of a loss rests upon a knowledge possessed by the insured of the existence of the blockade—For if he is ignorant of the fact the policy is good—but if after notification of the blockade.

he attempts to enter & is captured, the policy is vacated.

So also Ins. on a trade in contravention of an embargo is void. Per 10. 184.

Commerce with an enemy in all countries is to be discouraged - Hence Ins. on goods that are insurance of property belonging to an enemy is void - & J. B. thinks Ins. on goods considered in this country whenever a precedent is or has established - & this notwithstanding it has been usual in Eng. to consider such cases as binding. 1 Bos. & P. 945, 8. D. 1. 548.

Ins. on goods is prohibited by the insured till the end of the war - for the L. of nations is to us what the L. of Eng. is to that country.

Ins. on goods in Eng. by the L. of B. C. that goods from land in an enemy's country were insurable. But this decision, in Bos. & P. 945 was afterwards reversed in a case of similar nature in the L. of King's Bench - & it appears now to be settled that an insurance of such goods is illegal. The L. of nations is to be considered in this country.

The wages of the crew & necessaries are upon principles of policy to be insured, for Ins. on goods in time of danger to render them less active & to make less exertions for the preservation of the ship & cargo. 1 B. & P. 187.

If however after the wages are paid they are expended in the purchase of goods, these goods may be insured; or, in short, may be insured that is of the nature of an advance to commerce - as commodities erected on the spot for the purpose of carrying on a trade, & a rule for the purchase of goods. 1 B. & P. 187. Bos. 1208, 1212.

As a L. as to insured goods till the insured comes, it must appear that some misfortune has been done there when lying in the harbour a ship was lost, & if any goods were on board, there was no misfortune there, the insurers can't be subjected - But when a vessel has been insured at a port, & her cargo is at another

a loss while going from the former to the latter place
with little or no chance to recover.

Any person having a qualified duty in goods, as a person
or any person there - but this does not include the person ha-
ving the legal duty, from immunities also.

It is a general rule that no person can obtain a double loss
on the same duty, & this case never is done to obtain a
double satisfaction. 1 Bac. 281. 1 Bl. R. 109. 2. T. R. 188.

2. Do. 758.

But under certain circumstances a double loss may be
expected - If a vessel may be had by the insured
either of the 2 insurers, for the whole sum insu-
red.

It has been made a question whether the prospect that
I expect to make, upon the accomplishment of a voy-
age can be insured. There has been but one case where this
principle has been recognized Perk. 267.

J. B. thinks there are no grounds for such a decision
& that goods not lost be considered as a piece
lost.

Bottoming bonds are insurable by themselves

& I mean insurable without any beneficial interest,
but having the legal title only as in 1. Do. 14.
1. Do. 26. 918.

When there is a reasonable expectation of advantage the
owner may insure duty unpaid for that purpose, as in
case of capture at sea in time of war. Marshall. 84.

Of the Policy

Policies are either open or valued. When the party is valued by agreement of insurer & insured, at a certain time & from that time is insured the policy is valued — but is frequently so, so can that an ins. is made without any valuation. In this case the instrument is called an open policy, & the damages actually sustained in the loss of recovery, not any mere benefit or expected advantage.

Hence it appears that all wagering policies must be void — than however there have been some by stat. Geo. 2. Has a W. Ball v. Wagner & all courts in sound policy ~~are void~~ courts in insured ins. 176. 716 Barf. 589. Bur. 1171. Mar. 111.

And as all wagers that tend to introduce indecent testimony or which tend to wound the feelings of our country, or to disturb the peace of society are void — but necessary of testimony is no objection to its admission. when necessary to the decision of a criminal case. Barf. 429. 1. 1. 2 Do. 610.

As it respects wagers the policy of them has in all cases been questioned, & the decisions in support of them are generally in support of precedents, which the law is unwilling to overturn. Barf. 616. 2 Do. 610.

But wagers & wagering policies are directly opposed to the maxim of the L. C. as being no sound policy. It is considered clear that where there are maxims paramount to every thing else, & decisions oppose them those decisions are not to be made by those judges who adopt the maxims.

A time will now be taken of the policy on which wagering policies stand, before the A. Geo. 2. in point of only the first decision was in 1691. & that declared policies of this description to be void. & in the succeeding year 1692 the decision was given in Chry. 2 Thom. 262. 716. 10. Mad. 779. But in 1700 we find wagering policies for the first time held valid. 1. Shaw. 156.

Yet in 1716. they adhering to their former decision declared them void - but in a subsequent point of the same year decided that they were valid, & then the L. stood until the meeting of the stat in 1746. Rev. 1250.

Altho the stat has no force here, yet as to be governed an equity principle such policies would not, in this country be supported, for they are as has been proved directly opposite to the L. & to the general belief of the world.

Of Reinsurance.

A reinsurance is not what the law would seem to import - a double assurance - but an ~~insurance~~ of the ^{same} ~~same~~ insurance is frequently effected when the commercial insurer thinks there is danger of a loss, & is himself unwilling to run the risk.

As there is no priority of contract between the best insurer the insured, moreover in case of loss can be paid as the former by the latter - so that the insured has but one remedy, that in the original insurer.

Reinsuring has in Eng been restricted by stat - but as is allowed by the L. & M. in practice notwithstanding the stat. when the first insurer is insolvent.

Of Double Insurance.

This is when 2 Ins. are made by the insured upon the same party - this the L. allows for the safety of the insured when the insurer fails. But in this case there can be but one recovery. & this may be obtained from either of the insurers. In which case the loss must be divided between them. 1 B. & 416. Bacon. 254.

This principle was not uniformly known in Eng to the L. & M. but was early recognized by the L. M.

Two persons may insure 2 different interests, each for the whole value - as the master for wages & the owner for freight - but a double loss is not when the same man is to receive 2 pieces instead of 1 for the same loss. In manner of the very much 2 losses are the same thing. But the L. intervenes & says he shall receive double for the same loss, but not contented with satisfaction. 1. Shaw. 130. 1. Burr 581. 498.

The Risques insured against.

All the losses incident to the sea are insured in the same policy, or any 1 of them particularly.

When the loss of all the cargo insured in the policy is occasioned by the will and act of the M. & mariners, the insurer is not bound - for this risque was not stipulated for in the policy - if however the loss was by the barratry & negligence of the M. & men, the insurer would have been obliged.

If the voyage or commerce carried on is illegal no loss can be made upon it.

By stat. no loss can be made in slaves.

Those accidents by which a loss may happen, which are usually insured in the policy are, perils of the sea, men of war, fire, enemies, pirates, rovers, thieves, letting of men, & captured, taking at sea, arrest & detention by kings, princes & hostile, barratry of the M. & mariners, & to use the most ing clause, damages of all & every kind, that may happen to the ship or cargo. L. C. 91.

By the L. L. M. losses of every kind of included in the policy were recoverable, & if part of the goods were damaged the injury must be repaired by the insurer. This valuation is now however qualified. When the loss is not partial it cannot at all times be recovered, & indeed a memorandum to that effect is now usually annexed to the policy - in

which, is agreed that in case of a partial loss, of certain articles, the insurer shall not be subjected. These articles thus excepted are of a perishable nature, & consist of corn, flowers, fish, salt, fruit & seed - & sugar, tobacco, herbs, glass, hides & skins, no recovery can be had unless the loss, be an exceed five percent - upon all other in forty & percent is allowed.

To these exceptions to the $\frac{1}{2}$ Rule 2 other exceptions, viz when the ship is stranded or the loss is $\frac{1}{2}$ in either of which cases the former Rule doth operate.

When the ship is stranded the $\frac{1}{2}$ & $\frac{1}{2}$ is restored, & the insured may recover for any partial loss, by the first decision any loss happening before the first stranding was the same as if occasioned by the stranding. Rev. 1550.9. 9. T. R. 110. 216. 4. Do. 789. Park 116.

By the loss being $\frac{1}{2}$ is not meant a total loss - but a loss occasioned for the general safety of the ship & cargo. Rev. 1550.9. Park 116.

As when goods of a heavy nature are thrown overboard to preserve the remainder. In such case the smallest loss must be repaired by the insurer.

The term total loss has a distinct meaning in the L. M. When the loss is so great, that the salvage don't amount to the value of the freight, the loss is always total.

It was formerly held that if the thing specifically insured tho of no value the insurer was discharged - not so now. Park. 774. 214. 3. R. 210.

The insurer is always liable for his own & the M. M. conduct - for the negligence of either excuses the insurer unless the bartering of the M. is insured on.

1. Merchants. 540.

There is always an implied agreement on the part of the insured, that the ship shall be sea worthy & as appearing, the policy will be void.

The owner of M. is liable for the embarkment of the
Mauinen.

A case arose in which a vessel arrived & enabled her to
was held by the Ct. that the M. was liable - but J. R.
thinks on the principle of the L. M. 1. Vent. 198. 170.
T Ray 220.

But for theft committed on board the M. is liable, &
this notwithstanding the words themselves in the pol-
icy - for this extends to robbery & private fraud without
that these things (See cases 918).

Owner are liable for theft committed in loading & un-
loading. 1 Vol. 698

Duration of the Voyage.

1st Duration of the voyage as the goods. From the time
a warrant of the policy, the goods are insured from the
time they are put on board of the vessel until they
arrive at their destined port, or are discharged
safely landed, then if they are lost while carrying
on board, the loss rests on the owner.

After goods are once landed on board they must be there
continued, not removed unless thro necessity - as by
means of the ship being disabled - in which case they
may be placed on board another vessel, & if a loss in
transit will be covered by the policy. 1 Burr. 454. ~~See~~

When the Ins extends to the landing of the goods ^{good} safe-
ty, it extends to the boat or lighter in which they are
landed on shore. Mann. on Ins. 166. 1. Burr. 351.

It was however here held that if the insured made use
of his own lighter, the insured would be discharged
in case of loss but this is now decided to be immaterial.
11. 1295.

The insured is not at liberty to prolong the voyage—
but after the arrival in a port or intermediate time only,
is allowed for their landing Art. 214. 215.

(But there are some cases in which he is the usage
to keep the goods on board, for some time before they
are discharged— & even to sell them from the ship
as in the commerce with the West-Indies— & the coast
of Guinea— here the usage is always to be observed.
Vol. 1. p. 100.
and Doug. Henryway.

And in answer to show the particular mode of convey-
ing on a trade in any place, evidence may be admitted.
Id.

Duration of the Voyage on the Ship.

This will depend on the words & construction of the policy. When
a ship is insured from 1 place to another, the voyage does
commence till the commencement of the voyage— & this is
when they have once taken anchor with a bona fide inten-
tion of sailing, tho she is obliged immediately to return to
port— the liability of the insurer in such case continuing
— therefore for to be secured from a loss before sailing he must
act to insert in the policy the words "at & from" the port
where the vessel lies, & the voyage then commences from
the time of quitting the insurance, & a reasonable time is
allowed the insured to purchase for the voyage. 1. Atk. 545.
2. Do 559. B. T. R. 502.

When a ship is insured at & from 1 place & thence back, it has
been held that the homeward voyage commences immediately
on the arrival at the place. But 'tis a R. that, within the
outward voyage now the outward voyage ends till the
ship shall have been 24 ^{hours} removed in safety— & thence the
Judge thinks that the homeward voyage does commence
till that time.

The voyage on has been well continued only till she has been
safely removed 24 hours in port, in safety— but suppose the
ship is seized for smuggling after the 24 hours have ex-
pired, you are not to consider the continuance of the

ing. The answer is no. much care is shown, ed. 1. 5. R. 132. 154.

Реш. 25.

When the insurance is paid a particular limited time as for 6 months the underwriter is in all cases discharged from the expectation on the time, the the cause of loss does however exist - from the expiration of the time, &c.

But ships being rounded in sand safely is much such
safely, at that she may have an opportunity of un-
docking & discharging her cargo. No. 149. Peak cas. 211.
Thence the ship is rounded back to purpose - guarantee
the rigging continues, & whatever prevents the ship being
unloaded is evidence that she was prevented from being
so. found in Port. Peak 28. 18. 47. contra. Rec. 239. vol. 2.

The insurance on the rigging & provisions of the ship continues no longer than while they are on board, unless the owner of the trade is to the contrary. L. B. 344. R. 20.

And here the Policy will always come at this in the way
of power. I. N. R. 127. Rev. 177.

When delivery is given in a policy, from the start to finish at any point, no part out of the direct track is included. (Arch. 50)
 & find where delivery is given to finish & stay at any point.
bulk may not be another. (Arch. 51. 1. Reg. 610).

When a vessel is made, on a foreign ship in a particular trade that has particular usages, the usages are not to be negatived by the common usage made known to him, as it can be shown that he actually knew them. 1. B. & P. 610.

If an increased ship quota the same directed in the sale
or more mercifully, the most humane such measures of
mercy in the same course, otherwise the endeavor
will be abandoned.

Duration of the Risk on the Freight.

This continues from the time the goods are put on board to the arrival of the ship at the destined port. It seems if part of the goods only are shipped, the whole in the case of valued policies is recoverable. See 1251. 9. T. R. 362 or 212.

When a ship has to sail to another port to take on board her cargo, the risk commences when she first sails. C. R. 478.

Nothing may be done by the insured to change or increase the risk. As by taking letters of marque — the policy will be made void & the insurers discharged.

But letters of marque for the purpose of inducing men to enter, without intention of using them, tho the risk was not perhaps changed or increased, ^{as} the letters were not used the 1st held & discharged the insurers, because they felt out a strong temptation to deviate — The judge doubted the propriety of this. R. 9. T. R. 540.

So where letters of marque were taken out with the same view as in the former case, but in this there was no certificate from the officer, that there were letters given — there was a deviation & a loss ensued — yet the insurers were held liable. C. T. R. 579

Now these 2 cases are inconsistent with each other, & the only way of reconciling them is, upon the grounds that the first were legal letters of marque, having been certified by the proper officer — & as the latter were not legal, they must have been considered a mere nullity.

Of Insurance by Agent.

The Ins is generally effected by an agent called a broker, & to whom the insurer always looks for a premium, & for a fair disclosure of facts.

It has been questioned whether the insurer could maintain an action on the insured, for the premium, when the loss was obtained by a broker - No there has been no decision on this point - would seem from principle, that the action would lie - for the agent merely acting for him would bring the case within the well known principle of qui facit per alium facit per se. The broker must have either an express duty to act in each particular case or a general duty to act in all cases. Burr. 2429. 2429.

But a direction to insure given by 1 party owner only will not bind the other insurers.

Is a R of the L. L. that no owner compels another to become his agent. But in the L. M^t this R is dispensed with in 3 classes of cases.

1. If a broker is directed to obtain an ins by his correspondent & has sufficient effects for that purpose in his hands, he must insure or he himself will be liable.

2. So when a man has a correspondent who has a reputation in the habit of insuring when insured, & has never refused the agent, when requested under these circumstances must act or he will subject himself.

3. When a M^t abroad sends party, as a bill of lading, to his correspondent, who accepts it, he is bound to insure. 1. L. R. 22.

2. Do. 108

And indeed he settles that when I voluntarily undertakes without any consideration, to insure for another, but by means of his negligence or loss, comes to the principal, the agent will be bound. 1. Esp. R. 24. May. 208.

When the agent conveys any fact he ought to have disclosed, the insurer is discharged - but the agent becomes liable for as much as the insured recovers from the reinsurer, as the insurer had for no more. 5. T. R. 153. 2 Do. 168

And if in this case the reinsurer would have had any before

the agent will be allowed to ret. up that expense as his own.
Bank. 303.

The agent is always bound to deliver the policy to the insured & to deliver it to the insured. If he does he will in all cases be considered as the insured. Bank. 4.

When goods are insured the name of the ship is usually mentioned in the policy - & when this is done they can go on board no other - unless with the consent of the insurer - & when the master is particular insurer, he only can take the command of the vessel. But the c. is sometimes insured with a provision that he shall go, or some other stipulated person - & if it is apparent that there was no intention of sending him that is named, he will operate as a fraud & discharge the insurers - for prior to respect to his promise they might have been insured to insure him. When the ship is not at the time ascertained, the instructions can usually be to load any ship or ships - & this includes vessels of every description. P. Ansonian. 163.

When goods are insured it is unnecessary to particularize them - it is enough to say an goods & merchandise. B. R. 977. 405. 429
B. R. 1974.

Ships ought & bottom - goods & merchandise will include all kinds.

If however these goods are specified, there are other goods on board which are not, & they are not the insurers is not bound to pay the policy. But if bottoming & responsibility bonds are insured they must be specified. Marshall. 225.

So the c. is not bound to insure on cloaths may - as also may the ship's provisions - but in both cases they must be specially named - but the provisions can be covered by an ins. on the vessel's provisions - this not in an ins. on the cargo. 4. R. 206. 1. 20. 127.

goods loaded to the deck are not included in the policy unless
named - for they are much more exposed than other goods.

Perk. 20

Perk. Bullion & all foreign coin must also be specified, &
their amount & respective values made known. In Eng. how-
ever it is not customary to name articles of this description.

1. Chreniger 29. Rev. 17.

The loss of a ship when cargo can't cover the cargo - for they
are different things.

is necessary in a policy that the voyage be named & also
the time & place of departure - for if this left in blank the
policy is void. Perk. 20.

And thus was made an upset at Geneva & Nova Scotia
- a loss, insured & on trial it appeared, that the ship had
taken her cargo on board at Leghorn, 6 months previous
to the sailing of the ship - & that the cargo was of a per-
ishable nature. 1. B. B. 443. 463. Perk. 27.

It was admitted that no disclosure of these facts was made
- yet the insurance was valid.

As a B that when the place of destination is misstate-
mented, the policy is voidable - But when the departure is
per place, & there is a secret intention of going to another
& a loss happens before the ship arrives at the sounding
point, the insurer is not discharged - for the mere intention
of deviating, will not release him from his liability, there
is a contrary decision in anyland.

When a ship was insured for a certain time & sailed before
that time, on a different voyage from that described in
the policy, the insurer can't recover, tho' the afterwards
gets into the course of the voyage first intended, it is not
after the day on which the policy was to have attached.

2. Perk. 90.

When it is manifest that a deviation is intended, but a loss hap-
pens before it actually takes place, the insurer is still liable.

2 H. Bl 399.

It has been made a question whether a ship insured with an intention of going from A to B. to which latter place there are 2 boats, and if one is wrecked by navigation, the owner is discharged, if the insured boat put out a truck & is not wrecked. 7. J. R. 162. ^{Boat in Danger} ~~Boat in Danger~~

But in time of war its usual in insuring on the dining point, to make enquiries & discover in which of the courses the enemy has missed, & take the other large a circumstance direct, yet if the owner directs the M to take the 1 which he chooses at all events, & a loss happens the owner is discharged.

In all policies the perils intended to be insured in must be strictly enumerated.

From all injuries arising from bad storage of the goods, as their being exposed to the weather, the insurer is not liable - for there was negligence in the M.

In all cases of ships insured at sea, the words "lost or not lost" are inserted, & then the policy will cover all losses, from to that time.

After a disaster has happened the insurer is at all the expense of salvage, & hence a clause to that effect is introduced into the policy - & the insured may make every effort to save at the expense of the insurer.

Policies always acknowledge the receipt of the premium - but there is no evidence of receipt - & ind. apt. will never supply his loss its recovery. Its inserted in order to preclude the insurer in case of a loss, from saying that he received no consideration.

A policy may be attested by 2 or 3 copies, where it can be shown, that there is not made according to the agreement - & here some evidence may be introduced to prove what the agreement was. J. R. 162.

the soundness of the measures the R. Salk. 444.
Law et. l. Ver. 917. l. Act. 594. 545.

In the policy are contained several expressions as to the trust of the insured which are called warranties that will now be considered.

Of Warranties.

The warranties of the insured must all be literally complied with as the policy is void.

The warranty is an agreement of the insured, appearing on the face of the policy, qualifying & explaining it. They are in the ~~condition~~ nature of conditions precedent. & must all be complied with before the insured can be subjected.

Sometimes they consist in affirmations as that the ship is neutral, that she sailed on a certain day & the like. So also they may be enjoining & promise that some thing shall take place - as that the vessel shall sail under convoy, & that she should be of such a power, & the warranty of any of any of these particulars ~~shall~~ ^{shall} ~~from~~ ^{from} the warranty shall avoid the policy, & this without any fraud of the insured.

There are also warranties implied from the nature of the contract - as that the ship is seaworthy & that she shall be navigated with skill & care, that the voyage is a lawful one & that the usual track shall be followed.

Express warranties as before laid down must be strictly complied with as the policy is void ~~at~~ ^{ab} ~~initio~~ ^{initio} - & whenever the policy has not been rendered void after the voyage has commenced, the ~~insured~~ ^{insured} ~~is not bound~~ ^{is not bound}

As to the strict compliance & literal performance of the warranty, the following case is an example. A ship was warranted to sail from Liverpool on a certain day with 50 hands - she sailed with but 46 - yet within 6 hours, took on board the remaining 4 - 5 months afterwards she was captured & the insurers were discharged.

1. F.R. 943.

His immaterial within the non compliance with the warranty, was, for the most substantial reason imaginable - on that issue existing circumstances was, impossible to comply with it. Case. 606. 790.

A representation to the underwriter, need not be a warranty contained in the policy in literal, complied with - if it is substantially so too sufficient - but if false in a material point it will void the policy. Case. 785, 790.

Dang. H. ^{Carriage in} ~~Carriage in~~

A ship was warranted to sail on a certain day but was prevented by an embargo laid by government - still the policy was declared void, & the case would have been the same, had the government given permission, enemy, or the like. Case. 785, 790. 926. 601. 7.

But a refusal may deviate from the course of the warranty. Case. 601. 7.

Warranty to Sail with Convey.

Convey, signifies a person appointed by government for the protection of trade. When a private armed ship is not a convey. Case. 949.

When a ship is warranted to depart with convey, she must sail to the place of rendezvous, & if lost en route while going to it without convey, the insurers must be liable. Case. 156. 543, 5. 1265.

By sailing with convoy is meant ^{for} a whole voyage & not
for a part of it. *Essex. Eng.*

But sailing with convoy may not mean, a convoy to
the port to which the vessel is bound - for goods may
be appointed the convoy to sail only to a particular port
Id. 1. Bos. & P. M. 211. 2. H. R. 551.

It is not necessary that the convoy be one & the same for the
whole voyage. *Park 349. Marshall 269.*

To constitute a sailing under convoy, the vessel insured
must have sailing orders if possible from the M. of the
convoy - but particular circumstances as ships appointed
etc. may exempt the vessel from the M. of the *Park 349. 551.*
1. Bos. & P. 2. Do. 164. Sh. 1286. Park 351. 2.

The M. of the vessel must exert his utmost to keep with
the convoy - but if separated by storm, or in lost sight
of by being a bad sailer the insurer is not discharged
Law 216. 1. Shaw 440. 4. Mod. 58.

Of Neutrality that the Party is Neutral.

When party is maintained neutral his sufficiency that he so at the
time the war commences. *2. B. R. 574.*

It has always been held in Eng. that a condemnation
by a foreign court, is conclusive evidence that the party
was not neutral. *1. C. B. 368. 2. Do. 631.*

This principle has never been adopted in France & now
for it would be received in this country is uncertain.

It seems that the question whether as respects to the rights of neutrals by a belligerent amounts to a breach of neutrality, remains defined before the question whether the L. of the L. of nations considers this as a jurisdiction. Upon this point all nations are not agreed - the strong always contend for it - the weak protest as it. R. considers it to be a fact, that the right of search was denied by every nation, until the institution of the armed neutrality in 1780, when it was claimed that free ships need free goods. But this was a natural consequence of another R., that no neutral shall trade in articles contraband of war. If such neutral vessels were searched, it will never be possible to discover whether the cargo of this description is on board. S. P. R. 23. 192. 7.

But says the fifth searcher finds nothing, after examining the vessel, sending her into port to be examined. he will be condemned for costs. If he only stops her on the highway no injury can accrue. The armed neutrality of 1780 was executed by France, reserving however to himself the power of visiting her as just to it - this she never has done except as it respects the Dutch. Yet Britain would not join the confederacy but repudiated it in toto. Spain & Portugal having but little interest in the defence of commerce, their power being almost entirely extinguished, kept aloof. This system of defence adopted by the weaker nations was abandoned for a time, but was again renewed & continued until the confederacy was broken by the victory obtained before Copenhagen, during the last war by D. Nelson.

By the Venetian L. which is the most ancient of all mercantile L.s. an enemy's goods when found on board a neutral are seized, but the carrier was never subjected to any injury - his freight being paid him - This principle was afterwards recognised by the Dutch - in every

respect except that the freight was by them never paid.

Kattel mentions the propriety of the right of search & declares that a neutral visiting it will be a good prize. Kattel. 133. Ch. 7. m. 114.

But admitting the right of searching single merchants the opposers of this doctrine enquire whether single merchant sailing under convoy, can be searched? It is considered that if the negative of this question was established it would be needless to contend for the greater knowledge, as it would be entirely counteracted— for if neutrals could not be searched while under convoy, they might trade at any place in any kind of goods.

The Judge says that all European treaties for the last century & a half, have adhered to this principle as an existing right. & he is fully of opinion that it is not only justifiable, but upon principles of justice ought to be enforced rigidly.

Another ground of positive neutrality, is sailing without proper documents, or acting in contravention of any treaty— but the want of the want of these papers is not conclusive evidence in such respect, for they may have been lost or taken away— the amputation however is such case being an the answer of the vessel— & in order to subject the innuendo there must have been an actual sailing with the papers— otherwise he will be discharged. V. S. B. 705.

Belligerents frequently issue ordinances & as it is much often in the form of decrees & orders, directly opposed to & in absolute violation of the L. of Nations— a non compliance with such orders, is not a forfeiture of neutrality— & a refusal to obey them does not discharge the innuendo. Such ordinances however

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Law Merchant.

must have their effect. for the insured must inform
the insurers of their existence as of any other fact Park 315.

354. 362 & 363.

Of Representations.

When an insurance is obtained representations are made by the insured - & they consist in collateral information concerning the voyage - & hence are distinct from warranties - for the latter must be contained in the policy, while the former may be by parol or in writing - false representations consist as much in the concealment of truth as in misrepresentation - for they have as much of fact as misrepresentation - hence it is that any thing which falls short of strict integrity or honesty, will avoid the policy. A warranty is a condition precedent & must be complied with - but a representation is not a condition of liability, & is sufficient if substantially true.

A representation may be innocently made & at the same time false. Yet such an error will discharge the insurer - & if the policy is in this case voided ab initio, even tho' the loss is unconnected with the facts misrepresented.
Park 176.

E.g. Suppose that the insured, without fraud attempts to make a representation of which he has in fact no actual knowledge - but made it upon his belief only - to void the policy - but if it should be declared to be the wish of the insured, & all the circumstances, should be stated truly, the insurer would not be discharged. ^{See also in} Hatchers. Doug.

The principle of the case above cited in Doug. is considered by the Judge - For tis a universal R. that where there are several undertakings, a false representation to any one of them vitiates the policy as to the whole - & will have the same effect if there is an engagement with the first, that he shall not be subjected in case of a loss. Comp. 185. in H. ^{See also in} Doug.

A misrepresentation thro' mistake, if tis material will avoid the policy. Ut supra.

And if the misrepresentation arises from the fraud or negligence of the insured or his agent, the insurer is discharged. 1. Pl. 12.

The representation was held to be substantially true when the ship was represented to be of the power of 12 guns & 20 men - when she in fact carried 10 guns & 6 men, & 11 boys - for the power is here as great if not greater than is represented - had this however been wanting within the policy would have vitiated it. Camf 275.

In one case a false representation will not avoid the policy - & where the voyage pointed out is longer & more hazardous, than the one performed. See in Boscawen King. 271. Park 152.

A concealment & a misrepresentation amount to precisely the same thing both avoiding the policy ab initio - for the suppression here has here the same effect as the declaration facti. Sto. 1189. Park 151. 1. Pl. 574.

It has been so that a well grounded suspicion of a concealment is sufficient to avoid the policy - but then it would seem that the it must be fully ^{and} convinced of the concealment. Exp. 273. 307. Park 209.

Even if the fact concealed appears to the insurer as immaterial, & is not disclosed on that account, yet if the jury think it a sufficient ground they may discharge the insurer. See in Boscawen King. Park 209.

All doubtful accounts as maxims of a ship at sea must as well be disclosed by the insured, & not given as actual information. 1. Pl. 170. Sto. 1183.

It is also incumbent on the insurer to make all disclosures within his knowledge - as where a ship having been long at sea, & the information received of her was insured - when the insurer knew at the same time that she had actually arrived. Boscawen 1909. 1. Pl. 574.

Fact of public notoriety such as enemy arm is supposed

Of Representations.

When an insurance is obtained representations are made by the insured - & they consist in collateral information concerning the voyage - & hence are distinct from warranties - for the latter must be contained in the policy, while the former may be by parol or in writing - False representations consist as much in the concealment of truth as in misrepresentations - for they have as much of fact as misrepresentations - hence it is that any thing which falls short of strict integrity or honesty, will avoid the policy. A warranty is a condition precedent & must be complied with - but a representation is not a condition of liability, & is sufficient if substantially true.

A representation may be innocently made & at the same time false. Yet such an one will discharge the insurer - & the policy is in this case vacated ab initio, even tho' the loss is unconnected with the facts misrepresented. Park 176.

Ex. Suppose that the insured, without fraud attempts to make a representation of which he has in fact no actual knowledge - but made it upon his belief only - to avoid the policy - but if it should be declared to be the belief of the insured, & all the circumstances should be stated truly, the insurer would not be discharged. ^{Boothby vs} Hatchers. Doug.

The principle of the case above cited in Doug. is considered by the Judge - For tis a universal R. that when there are several undertakers, a false representation to any one of them vitiates the policy as to the whole - & truth have the same effect if there is an engagement with the first, that he shall not be subjected in case of a loss. ^{Mr. Denials} Comp. 78. 1st. Doug.

A misrepresentation thus mistaken, if tis material will avoid the policy. Ut supra.

And if the misrepresentation arises from the fraud or negligence of the insured or his agent, the insurer is discharged. 1. P. 12.

The representation was held to be substantially true when the ship was represented to be of the force of 12 guns & 20 men - when she in fact carried 10 guns & 6 men, & 1 man with 11 boys - for the force is here as great if not greater than is represented - had this however been wrong, surely within the policy would have initiated it. Campt 275.

In one case a false representation will not avoid the policy & when the voyage pointed out is longer & more hazardous, than the one represented. ^{See in} Hutchins. King. 271. Park 152.

A concealment & a misrepresentation amount to precisely the same thing both avoiding the policy at issue - for the suppressio veri has here the same effect as the declaratio falsi. Sto. 1188, Park 186. 1. B. 1. 394.

It has been so that a well grounded suspicion of a concealment is sufficient to avoid the policy - but then it would seem that the it must be fully ^{and} convinced of the concealment. Exp. 1. 373. 407. Park 209.

Even if the fact concealed appears to the insurer as immaterial, & is not disclosed on that account, yet if the jury think it a sufficient ground they may discharge the insurer. ^{See in} Hutchins. King. Park 209.

All material accounts as maxims of a ship at sea must as well be disclosed by the insured, & not given as actual information. 1. P. 150. Sto. 1188.

It is also incumbent on the insurer to make all disclosures within his knowledge - as where a ship having been long at sea, & the information received of her was insured - when the insurer knew at the same time that she had actually arrived. Bur. 1909. 1. B. 1. 394.

Facts of public notoriety such as enemy arm is supposed

to be acquainted with, need never be disclosed in either
way.

The private opinions & speculations of the insured he is
not bound to make known.

Privateers in time of war are never bound to give
information respecting their voyage.

It has been questioned whether the previous state of
the ship must not be made known - but certainly
as there is an implied warranty that she shall be sea
worthy, it would seem wholly unnecessary to give
such information. Law 229. Ben. 1905. 1. Bl. R. 199

Of Implied Warranty.

The insured in all cases impliedly warrants 1st that the ship shall be sea worthy.

2nd that she shall not be changed unles by consent or necessity.

3rd that she shall be conducted & navigated according to L.

4th that she shall be prepared to meet all the difficulties of the sea, by being properly manned & provided with sea stores. For the want of any of these requisites the insurer will be discharged, for his undertaking is only in the unforeseen perils of the sea.

When the vessel is not sea worthy, neither the innocence nor ignorance of the insured, will subject the insurer. See L. 220. Marshall. 968.

And when it was agreed between the insurer & insured, that the vessel was not sea worthy, still the latter was discharged. Marshall. 969.

When a vessel is lost by reason of such defects as have been enumerated, the owner of the goods on board has his remedy as the owner of the ship. For they are both as it respects the insurer in the same predicament. neither of them being entitled to recover on the policy.

When a ship enters an unknown harbour without a pilot, when it is customary to take one, & the vessel is lost in consequence thereof, the M. will be liable. 7. S. R. 260.

When it is necessitated by necessity the ship may be destroyed - but not otherwise - & the ship being struck the salvage may be put on board another vessel - & shipped to its destined port, for the benefit of the insurers, then sold, & the produce returned for them in another bottom. 1. S. R. 611.

The navigation must as it is expressed be according to L. - by which it is to be understood the L. of nations & not the ordinances of any particular country - so also the navigation must according to trade - for there are

rate as to upon both parties. B. T. R. 172.

The implied warranty includes various things - such as that there shall be no deviation from the usual course unless compelled by necessity - for a voluntary departure, will avoid the policy but not ab initio for the voyage commences with the voyage - & hence the insurer will be liable for all loss happening previous to the deviation. Ed. Reg. 850.

By the term course as here used is not meant the short cut but the usual course - & consequently is no deviation to stop at such parts of it as are necessary. 1. B. R. 348. Camp. 601.

It has been contended that if no injury results from the deviation the insurer ought not to be discharged - but there is no decision in support of this position. But on the contrary if a loss occurs after a wilful deviation, the insurer must sustain it. Beaver. 313. 315.

An Ins was obtained from Dunkirk to Leghorn, & the vessel sailed to Dantz to procure a Mediterranean pass, & being afterwards told the insurer was discharged.

So also where the Ins was from Glasgow to Hull with liberty to touch at Hull - but another place was allowed at which business was usually done in the trade - but the it on the happening of loss held it to be a deviation & discharged the underwriter.

It is difficult to account for this decision, unless upon the ground that the liberty of calling at Hull, was intended to include the liberty of calling at any other port - & the decision at any rate promotes a principle of this kind.

When several ports of discharge are named in the policy, the ship must proceed to that in the order in which they are named - for otherwise, it will be a deviation. 6. T. R. 231.

When liberty is given to touch at any ports, they must in
take in their natural geographical order - for otherwise the
voyage will be protracted. C. & P. 593.

The general time of allowance must be regulated by the
course of trade. Marshall 394.

And indeed the whole business of deviation seems to be not
just entirely to the L. of necessity - & nothing but necessity
will justify a wilful deviation. 1. Bar & P. 313. Broom 916

Liberty may be given by the insurer to cruise in any
part of the world. Sto 1249.

The necessity of deviation arises in most cases from
stress of weather - & when a ship is found to be in want
of necessary repairs, a deviation for this purpose is just
ifiable. 1. C. & P. 22. 1. Alk 545. Park 301.

The going out of the direct course of the voyage, for the pur-
pose of obtaining convoy, if managed reasonably will not be
considered a departure. 2. Salk 545. Bomp 601.

A ship may also deviate to escape an enemy or avoid a
storm - & absolute compulsion or constraint in the
aff. will not excuse the insurer for a deviation. Sto 1264.

When a ship is thus driven from her course by any of the
above causes, & the reason for the departure no longer
exists, she is bound to resume her voyage in the most expe-
dition manner, & in the most direct course. ^{Charter party} in the Direct Course

By this is not meant in the L. C. that a total loss of the ship & cargo.

But when the voyage is frustrated or the value of what is saved, is less in value than the freight, the loss is total. There may be a total loss of the ship & not of the cargo. But damages arising from the weather will not make the loss total.

If the ship is stranded & ruined & the goods are not injured & there is no other vessel to convey the cargo to the port of destination the loss will be total both as to ship & cargo - but is otherwise if there is an opportunity to transport the goods into port. 1190. Park 62.

When a vessel is not heard of in a limited time it is general evidence of a loss - & when the insurer is applied to on the ground of such loss, he is not obliged to pay unless the insured will give security to refund the money in case of the ship's arrival - & if she actually arrives the security will be enforced - & when the money is voluntarily paid it must be refunded tho there is no security, provided there appears to have been a loss.

When two causes unite in the loss of a ship, the loss is to be attributed to the immediate cause - as when a vessel is driven by stress of weather on an enemy's shore & is taken by a privateer. Park 212.

The loss will in this case be considered to arise from the capture. 6 T. R. 656.

So when a cargo of staves were staved the loss was attributed to the want of provision, & not to the length of the voyage. So also when the ship was in the midst of the sea, & the shipwrecked lying in the harbour was saved by waves - tho it had the loss not to have been occasioned by the perils of the seas, & discharged the insurer. 1 Esp. R. 444.

The loss of a ship & furniture never extends to ordinary wear & decay, but to damage occasioned by extraordinary violence.

Any destruction of the cargo occasioned by a misfortune of the goods are thrown over board comes within the policy.

Animals upon the deck should die by tempest it charges the insurer - but if thro disease or sickness, is otherwise.

When the damage arises from running in any vessel at sea, is within the policy for whether the goods insured or - but the loss is upon the insured if repairs occasioned by the misconduct of the ship & manning.

Loss by Capture.

The word capture includes capture of all kinds, it being entirely immaterial whether by enemies or friends - Nor it never involves in it the idea of a legal capture - but always a total loss, & the insured may abandon entirely. Burr 696. 1217.

If however the vessel is recaptured & restored, before there is an abandonment, the loss is not sustained. 9. B. R. 518.

The insured must in any case where there has been a capture be compelled to abandon - & the insurer is bound to pay all the expenses of a recapture. 1. B. R. 319.

Prize bills were by the 1st of January 1793 in the insurers - but an act is now put to them in being by stat. Burr 1794. 1217.

Loss by Detention

The capturing a neutral at sea because she has enemies
not on board is a capture - & not a detention under the
Act - for the object is to make a prize. 2. Kerr. 176.

But when she is captured for the commission of some
unlawful act, it is a detention. The detention after a decla-
ration of war is held to be a capture not a detention.

A detention by an embargo subjects the insurer.

A detention by people means a detention by people in
their political capacity, & not as a mob. 4. B. 588. 6. Do 525.
Ld. Ray 640.

A capture after a cessation of hostilities is considered
a detention only. Mar. 441.

Loss by Barratry

Barratry is an injury sustained by the owner origina-
ting in the fraud & deceit of the M. & mariners - but
negligence & misconduct will never amount to bar-
ratry - smuggling, running away, deviating from
the course, wilfully or without cause, or committing
any offence that will subject the ship to forfeiture or
detention, is fraud & deceit & consequently barratry.
Mar. 585. Ld. Ray 1950. 1. B. 330.

The M. of a ship if he is the owner can never insure

his own barratry. & if he does the policy is void.

A demurrer arising from ignorance tho it avoids the policy, does amount barratry - for here there is no fraudulent intention. 7 T.R. 505, 6 Do 379.

But when the M. acts for the benefit of the owner he is not barratry Ste. 1178, 1264, 1 J.R. 924.

The mortgagee of a ship is always considered the owner of it - & he who charter a ship stands in every respect in the place of the owner of it. Mor 554. Comf. 152. 1 J.R. 338 & Do 84.

Prove that the person who is described in the policy as M. who was treated & who acts as such covered the ship out of his course or committed any other act of barratry for his fraudulent purposes of his own is prima facie sufficient to entitle the alt. to recover without showing negatively that he was not the owner or that any other person was. 7 T.R. 33.

If the ship is insured by the terms of the policy in any lawful trade - & the barratry of the M. is mentioned as one of the risks to be borne by the insurer, the underwriter will be liable for a loss by the barratry of the M. in smuggling - for the stipulation respecting the employment of the ship in a lawful trade, must be applied to the trade in which the owner employs her. 3 M.R. 222.

The insurer is not liable for a loss happening after the loss is at an end, from an act of barratry committed by the M. during the voyage. 1 C.R. 252.

Loss by Averaged contributions.

All losses that are sustained by an individual for the general safety of the ship, must be shared by all who are benefited thereby, who are the owners of the ship, the freight, & those who have cargo on board. The monies free from average which are inserted into the policy, mean free from any partial loss, but not free from any general loss - for then the insurer is liable.

And this loss for the general safety of the ship & cargo is always insured vs. - hence then who contribute for the general good may recover from the insurers. 12 Co. 63.

The goods or cargo thrown overboard for the preservation of the vessel is called jettison. Bacon 148.

Masts cables anchors &c when destroyed for the general safety of the ship, are entitled to contribution. So also a sum of money paid as ransom to a pirate is on the same footing.

But tho' the owner of goods thus thrown overboard may recover therefor, it must have been done with the direction & approbation of the M^r. & his assent is conclusive.

When a ship is plundered by a pirate of part of her cargo, there will be no contribution for this is not for the ship's safety.

And the case is the same when the loss is upon particular goods, arising from damage by tempest. And therefore seems to be that when a loss is sustained for the general safety of the ship, as if the loss contributed to the saving of the remainder, there must be a contribution. Moore 297.

There shall be no average when goods are thrown without any effect & the good ship is lost. 1 East. 220.

A ship in order to save a bar unloads a part of her

cargo, & places it on board a lighter, & they are lost - in such case there must be a contribution, for this runs for the general benefit - but on the other hand if the vessel itself is lost & the lighter is saved, there shall be no contribution - for if the goods which were placed on board the lighter, had been on board the ship, they would not have contributed to her safety.

It is an unsettled question whether the expenses & wages of the crew, during the detention & capture of a ship, amounts to a general loss. J. B. rather thinks they are
Rever. 150, 2. T. B. 407, 1. East 220.

Other damages arising from the perils of the sea & injuries to the rigging are not a general loss. East 226.

It settles that all party for merchandising & the purchase of obtaining merchandise, as cash & also plate & jewels, shall contribute according to their respective value for a general loss. Marshall 566.

But none having no value are supposed of any great amount, as jewels are not bound to contribute - & for the same reason it is supposed that wearing apparel & pocket money will be excluded.

When it has been necessary to throw overboard goods of the ship has been thereby saved, or her arrival in port, the owners of the manum make oath before a notary public as to the loss, the nature of it & specify the articles as nearly as the nature of the thing will admit of; the average is then made by the notary public, who determine the amount that each shall contribute - they have a lien on the party, until the owner has discharged the sum agreed. Mar 566.

If the goods are taken away & no average is made, the passengers sufferer may bring their action, as each one who is liable to contribute.

If the sufferers are insured, they may in such case look to the insurer for the loss. & when can the insurer after he has paid put himself in the place of the sufferer, & sue some of those who are liable to contribute?

A still it is so may be felt in equity in favour of the sufferer, to recover from those who are liable to contribute.

1 East 220.

When the duty that is lost is valued for the purpose of measuring the cargo, it must be put at its value at its destined port, & not at its original cost.

In order to ascertain the proportion which each is bound to pay, 'tis customary to value the ship & cargo at the port of delivery, & the duty of each one that is subject to contribution will bear the same proportion to the sum he is to pay, as the value of the ship & cargo does to the whole loss. Hard 304.

Loss by Expense of Salvage.

The word salvage in its general acceptation signifies duty which is saved. But it here signifies the expense of saving the duty.

He who preserves duty from a wreck is entitled to a reasonable reward, & until this is paid him he has a lien upon the goods.

This however is in Eng, & in most other countries regulated by stat.

Of Abandonment.

The insured under certain circumstances has a right to abandon his claim to the duty insured to the insurer - this operates as a complete transfer of the duty, & the insurer may recover as for a total loss - & thus the great benefit as the whole is saved.

When the vessel is captured the insured may abandon - for during the time of capture the loss is considered as total.

After there is an abandonment the insurer will not tho the there is a recapture.

If there is a recapture before abandonment, the loss is partial. Yet if the voyage is frustrated by the capture, or the salvage is less than the freight, the loss will be total even if the information of the capture & recapture arrives at the same time & the loss is partial if the ship is recovered. Burr. 696. 1198. 1. B. & R. 277.

After an abandonment is once made neither the insurer nor insured can set it aside. 2 Burr 696.

The L is the same in case of arrest & detentions by kings, princes & people, for the insured may abandon at any time during the existence of the detention. 9. Att. 178. Burr. 689. 1198.

And in all cases where the voyage is defeated or frustrated, his immaterial by what means the insured is entitled to his right of abandoning.

If a ship on her voyage is disabled & obliged to put into port, & is then sold with her cargo being unable to proceed further the loss is total. ^{Mill. on} Tucker Doug. 1. Pop. 237.

As to what amounts to a frustration of the voyage, anything which will in legal acceptance work a total loss will come within the R - Thus shipwreck which in most cases defeats the voyage is a total loss.

If the cargo is saved & there is another ship ready to receive it, to its original place of destination, the goods may be put on board her & the L is will continue on there - In this case the loss is total as to the ship, & but partial as to the cargo. 1. S. R. 182. Rank. 116.

There is no established rule to determine when the salvage amounts to more than the freight - but when it does actually fall short of the freight, the loss is total without an abandon-

no. 1. Park 166. 5. Bromus Par. Bar. 194, 195. Anagallis 1065

The time within which an abandonment may be made is fixed in some countries according to the length but by the L. C. Act the insured on receiving intelligence of such a loss, as entitles him to abandon, must make his election in the first instance, & if the abandonment is determined upon notice must be given of it in the first instance to the underwriters within a reasonable time - otherwise the right is waived & a recovery can be had only for a partial loss.

L. C. R. 604. R. Do. 268. Q. Do. 207. 570. Park 142.

Tho an abandonment can't be reclaimed when once made
yet the insured are never bound to abandon. 1. B. R. 270.
2. Burr 798.

There is no particular form in which notice of abandonment is to be given - it may be either by parol or in writing provided it is explicit. It is sufficient if given to the usual agent. Par. 172.

But an abundance can never be inferred from a conversation. Ex. B. 12.

The abandonment can't be of a part rather the whole is comprehended in our policy. Yet if the law upon the party is in separate policies to others - & part may be abandoned if distinctly valued in the same policy.

The abandonment must be absolute & not depending on any
country - for it operates as a transfer of title to the investor.

Mar. 5/4.

When there are several insurers & an abandonment is made to them they all hold as tenants in common without any priority.

In some countries, an abandonment of the ship is an abandonment of the freight also - But in Eng the L is otherwise - & this appears to be the C. L. est.

The minister in some cases does not abandon all his interest in the party - for the whole value of it may not

be insured. As where the cargo is valued at 4000 £ & the loss which is by subscription extends to but 3000 £, in this case the insured upon abandonment is entitled to one fourth of what is insured, & he is then a tenant in common with the insurers.

When a part of the cargo is insured & the remainder is covered by a bottoming bond. Upon abandonment is made upon the happening of a loss, the insurer is entitled by the L. L. C. to his share only of the party insured, as tenant in common with the insurers. But in France the insurer is covered and as a mortgagee, & is entitled to his whole loan. The sum is sufficient party insured to satisfy it, before the insurers receive any thing. & hence the latter may in many cases gain nothing by an abandonment. A ship & cargo were worth 10000 £ & each separately, worth 5000 £. A insured 9000 £ upon the ship B. 3000 £ upon the cargo & 63000 £ upon the ship & cargo. After a loss & abandonment 1000 £ only was saved. In this case A was entitled to $\frac{3}{10}$ 300 £ - B to the same & B the insurer upon the ship & cargo to 150 £ upon each. & the insured obtained the remaining 100 £ - 1000 £ of the ship & cargo being uninsured. & the 98.

It has been said that if a ship is abandoned & afterwards can be saved, such abandonment is avoided. This however is true in such cases only, as where the abandonment is made upon false grounds. If however it is made upon good grounds, it is absolute & binding.

A ship was insured from A to B. & in her passage was lost & abandoned. Subsequent however to the abandonment several barrels of specie were recovered. Still however it was held that the loss was total, & that the insurer was entitled to the party insured there 1926.

From this case it may be inferred, that no subsequent events can render a loss partial, which was previously total.

The M. is always bound to exert himself in case of a loss.

to the insured ~~the~~ the party as agent to the insured before the abandonment, & afterwards as agent to the insurer.

The M. has also an implied power in case of necessity to procure another ship, to transport the goods to the place of destination ^{Mills vs} ~~Kitchin~~ ^{Dang.} 1. P. R. 611.

So also he may sell the ship & cargo if necessity requires it, & vest the produce in other goods & send thereby another ship & they will be here covered by the old policy.

The mariners are also under an obligation to exert themselves to save the ship, & if they do not they are not entitled to their wages - & of this the M. is the judge.

Adjustment of Losses.

When the loss is total the insurers are to pay the whole - If the policy is valued & the loss is total, the entire value must be paid and when the loss is partial the amount of it must be paid - & the R. in such cases is to estimate the party insured at the prime cost, & not what it would have been sold for. (Burr. 1171.)

The goods are valued in their damaged state, & the sum is subtracted from the prime cost of the whole, which gives the loss sustained.

When the loss upon an open policy is total, the premium & duties paid at foreign ports, as well as the value of the ship when she sailed, & all subsequent expenses in repairing her during the voyage, are added to the prime cost paid by the insurer.

Is the nature of an ins. that the goods insured shall come safe to the port of delivery - & if they do not, the insurer shall indemnify the insured to the amount of the prime cost or

value in the policy. 3 Burr 1182. Marshall 541.

If they arrive but ~~less~~ in value by damages received at sea, the nature of the indemnity ^{is} speaks ~~demands~~ ^{demands} location, viz, that it must be putting the insured in the same condition (relation being had to the prime cost or value in the policy) in which he would have been provided the goods had arrived free from damage - that is by paying such proportion or aliquot part of the diminution in value occasioned by the damage.

When an adjustment is made his usual for the underwriters to sign it. Beaver 910. Park 118.

Return of the Premium.

The Law as it respects the return of the premium has been very perplexing & confused.

It settles as a g. R. that where no voyage has been run on the part of the insured, there shall be a return of the premium.

It is also so that where the contract is at initials void, the premium must be returned - this R however is not so generally true as the former.

When anchor is effected upon goods, which the insured supposes to have been put on board a certain ship, which upon his arrival appears not to have been the case, the premium must be returned - & if part of the goods were put on board, the strict R of eqly governs, & a proportionable part of the premium must be returned.

According to Butler if an employer another to do same it

legal act, for which the latter is paid, the premium may recover it back if the act is not done. So if there has been a premium given upon an illegal loss, it may be recovered back if the risk has not been run. But this is not at present the case - & these decisions the I consider omitted.

3. 1 R. 166.

When an Ins is made without interest & the premium paid, it shall not be recovered back by the insured unless the ship has arrived safe - & indeed an action for money had & received, will not lie to recover the premium of a marine insurance which is void 3 R. 166.

There is yet a set of cases in which the premium is not to be restored, when the insured has no interest, & when a capture is made & the vessel is insured safe only point, but an trial proves to be no prize & is acquitted 3 R. 15, 179.

This is the only case where a premium could be recovered when no risk has been run & no fraud practised.

1. East 76.

the Ins. was effected from A to B & the goods came on in fact on board, by the insured - here no risk having been run the premium was recovered Bur. 1709.

The principle then is this - if the Ins is at initio void without fault or crime the premium is to be returned - except in the case of a capture of a supposed prize. If however the Ins is void ab initio thro the fault or crime of the party, the premium need not be repaid.

When the policy is voided thro a non compliance with the warranty & there has been no fraud practised & no risk run, the premium must be returned - & tho the R. was formerly otherwise, if there has been any fraud & no risk run, the premium must be returned. 2 Burr 206. Park 218. Bur. 1761. 2. S. 1. 761. 170

The premium must always be returned when the voyage is given up.

The R is that when the voyage has never commenced, & there is no wrong assigned as fraud practiced, the premium is to be returned. However the failure of the voyage arises from the illegal or fraudulent conduct of the insured, the insurer shall return the premium & this upon principles of policy. 8 T.R. 154.

It is regularly true that there can be no apportionment of the premium - but to this G. R. there are exceptions.

1 B. & P. 172. Bur. 1237. Mar. 168. 570. 968. Bouff. 666.

Yet all cases of apportionment seem to rest on the usage of the particular trade. & that according to the G. L. M^t after the voyage has once commenced there can be no apportionment. But if there are two distinct voyages an apportionment can then be made. Thus when a ship was insured to sail from Hull to Bilbao warranted to sail from Eng. with convoy - the voyage from Hull to Portsmouth where the convoy met, & the one from thence to Bilbao may be considered distinct, & in case of a loss between the two latter places, an apportionment & return of premium can be demanded. Burnard & Woodhousey. 10 Reg.

It sometimes happens in the policy that upon the happening of a certain event, the premium shall be returned. 7 B. 421. 2 B. & P. 11.

As a R. that if the insured puts an end to the voyage by his own act, the insurer may retain a part of the premium for his trouble. This in Eng. is fixed at 1/2 per cent - but even this itself will not be allowed, if the loss was on an illegal trade. Its off G. & L. have jurisdiction over this branch of M^t L. & the action is always assumpsit. 1 Atk. 457. 2 B. 382. 3 B. R. 60. 525.

Most of the disputes that arise upon this subject are settled by M^t - & from this there has grown into habit a clause, ordering that all disputes between the parties if any should arise, to be settled by arbitration but it is now determined that such a clause does not act of justice of them

jurisdiction - & consequently that is perfectly negatived, however the dispute is submitted & an award is made, its conclusion. Bur. 1042. 1. M. L. 129.

Bottomry & Respondentia Bonds.

These are introduced for the purpose of enabling those who have fully insufficient to send a ship out on a voyage to borrow a sum adequate to the purpose - & as security for the enjoyment of it, the keel or bottom of the ship was pledged to the lender. In which case he undertakes that if the vessel is lost, the ^{lender} loses the money he advanced - but if she returns in safety he is entitled to receive the principal together with the premium or interest agreed on, the it should exceed the legal R. of interest. A part of this kind not being premiums is calculated to protect & encourage commerce. The ship & tackle when lent become liable to the lender as well as the person of the owner. The bottom of the ship which is pledged as security, gives the instrument the name of Bot. bond. 2. Bl. 358.

A Res. differs from a Bot. bond, in as much as the loan in the former case, upon the goods & merchandise & not upon the vessel as in the latter - hence as the goods may be changed or sold in the course of the voyage, the person of the borrower only is liable to the lender - & hence he is not to take up money a Res. for which himself only is responsible.

When money is lent upon Bot. & no vessel is near, there is no age being given up, the lender is entitled to his principal & compound interest only. 1 Kim. 269.

The case of a partial loss, the insurer is not relieved from the payment of the whole bond provided the ship lives to arrive in port. Mars. 652.

The lender upon a Res. bond has a lien upon all the salvage, after a total loss of the ship.

From the time of the arrival of the ship upon which money is lent at Bot. to the time when the money is repaid the interest is legal only. Mars. 651, 669.

The M of the vessel has an implied power to take up money in case of necessity, & to pledge the ship for its repayment & indeed this is now the only use to which Bot. bonds are put. Mars. 689.

Money can never be loaned on Bot. to an enemy. Mars. 689.

When a ship is lost thro the negligence or fault of the owner or his agent, as by being sent to sea when she is not sea worthy, &c. the lender on Bot. is still entitled to interest. 1 Ken. 752, 584.

In some countries the bond money in some cases be repaid as by a general average but in Eng. the L. does not extend to it. Mars. 652. Park 523.

Bot. bonds may be & frequently are insured - but they must be specified in the policy, for they are not included under the general term goods & merchandise.

Park. 523.

A Res. bond is never affected by a partial loss of the goods.

Contract by Charter Parties.

A cont of this kind is an inland rate by horse or in sailing, commonly between m^{ts} & the M. & owner of a ship. By the cont. the M. binds himself to deliver such cargo as is put on board by the M. at the port of discharge in good condition - & he is sometimes to be rewarded therefore by a sum in gross - & sometimes by a stipulated sum for the outward, & a further stipulated sum for the homeward voyage - & hence if the vessel is lost while in the performance of the first voyage, no freight is to be demanded, but if while performing the latter the former only is to be demanded. 1. Inst. 296.

When the freight is not to be paid till the ship returns & she is lost in her homeward voyage, the freighter is not liable at all.

As a rule of the L. M^t that the freight is always due when there exists no cont to the contrary, at the port of delivery - hence the M. for his security, has thrown a lien upon the cargo, until he is paid - this right however is commonly waived.

When the freight is an advance & the ship is lost in the voyage it must be returned.

As a R. that if there is any default on the part of the M. he loses his freight. 2. Prin. 882

As if he returns from the port of discharge without waiting for his cargo - if however the freight is not obtained by reason of the negligence of the freighter's agent, he will be entitled to his freight for both voyages. If a chartered ship becomes accidentally disabled on its voyage from fault of the M. he may either reject it if it can be done within a reasonable time, or hire another vessel to carry the goods to the port of delivery. If however the M. freighter disagrees to this the M. is entitled to the whole freight for the full voyage.

The freighter has the power of abandonment. & a total destruction of the goods, will free him from paying the freight. 2 Burr. 882.

But when the loss is partial he may abandon if the salvage is not worth the freight.

The M. & carrier are both liable to the freighter, for all damages that may happen to the cargo, thro the negligence or default of the former. 1251. Hurd 88. 194.

Penalties are frequently added to charter parties, they will however be reduced down by a ct of eq. 9. Ark 553.

When a ship is employed it must be by the consent of a majority of the owners - that is a majority of the interest. Those who dissent to the voyage are not to be deprived of their profits which may accrue from such employment. Burth 27. Shaw 19.

But if the defendants must not advance money for the putting out of the vessel, the others by agreement a ct of admiralty. giving bonds binding themselves to pay the value of the ship to the defendants in case she is lost, may deprive them of their share of the earnings, Burth 27.

If the M. sig provisions for the ship, the owners are liable therefore tho the master himself may be personally liable to the seller. 2 Burr. 5. Hurd 371.

Mannerers

As a regulation of all countries that where a manover makes an open debate, which is a mutinous disturbance he is liable to lose half his wages, all the goods that he may have on board & may be put on shore at the discretion of the M. to conspire to force the ship from her owner is a crime punishable with death.

The manoverers are answering at the point of delirium must stay on board till the ship is discharged & in such days they may be made to act as porters - but for this

Law Merchant

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they must be specially paid - If they refuse to do this on
leave the ship, they are not entitled to their wages.

Seamen are entitled by the L. M^t to their wages, on arriv-
ing at the port of d. duty - & any agreement to the con-
trary is not binding. As the U. S. Statutes such an agree-
ment can be enforced by Stat. 2. Sec. 728.

When the ship is lost the wages of the seamen are also
lost - & they may be deprived of their wages when they
do not exert themselves to save the ship & goods in time
of danger. 1. Sec. 179. Rev. 1844.

(Hphenix.

The mode of proceeding on the death of 1 of 2 joint
 M^{rs} as is the claim in favour of & us the company.
 In all cases of joint tenancy except the one minor con-
 sideration, the party jointly liable on the death of one of
 the joint tenants, survives to the survivor. But when
 of 2 joint M^{rs} dies, his interest in the party jointly
 liable goes to his estate. But the right of collecting the
 debts due to the company, belongs solely to the survivor.
 - & no suit is to be brought by the estate for damage by
 the firm - but the survivor must sue alone. Every
 other right but that of suing is in the estate. If the
 survivor is a bankrupt the estate may then be sued
 for a debt due from the company, but in such case it
 must appear upon the record, that he was a bankrupt
 & unable to pay the debt. 2. M^{rs} 265.

Stopping goods in transit.

There are certain cases in which cargo may be stopped
 in transit which are unknown to the L. S. This is
 called stopping goods in transit. Thus if a Merchant
 goods to another - & before they are delivered discover
 the buyer to be in failing circumstances, he may
 stop the goods, release the obligation & resell the goods
 this however he does at his peril.

See 1 O.B. 621. 4. 60. 420.
Exp. 222. contra 2 O.B. 699.

L. S. R. 91.

Vogues.

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Injuries to Things Real.

Under this general title we treat of 3. kinds of injuries viz trespass, ouster & waste - As to the other 3 injuries subtrahition, disturbance, & nuisance, we treat of them under the title of actions on the case, except subtrahition which may be so met to exist, in this country, ^{1st} ~~Chesap~~ ^{Chesap} ~~in a most ordinary manner~~ ^{as in the case of a house} ~~to things real.~~ I shall not treat of it to the full extent of the word trespass, but as regards the entering on a man's land, & committing ~~infringements~~ ^{infringements} without any lawful entry, & doing some damage to the same. 3. Bl. 209.

Every unwarrantable entry on another's land is an injury & this injury is called ~~trespass~~ ^{trespass} ~~as it always~~ ^{as it always} ~~does~~ ^{does} ~~some~~ ^{some} ~~damage~~ ^{damage} ~~as trespassing~~ ^{as trespassing} ~~damages~~ ^{damages} ~~his~~ ^{his} ~~her~~ ^{her} ~~land~~ ^{land} ~~as~~ ^{as} ~~it~~ ^{it} ~~will~~ ^{will} ~~with~~ ^{with} ~~imply~~ ^{imply} ~~this~~ ^{this} ~~damage~~ ^{damage} ~~even~~ ^{even} ~~in~~ ⁱⁿ ~~winter~~ ^{winter} when the ground is covered with snow - Again every man who holds land in severalty has a sole right to the profits of the land - so that the man who enters lawfully has profits of land which he continues and if this is an infringement of the owner's rights & consequently are injury 2. Bl. 209. ^{1st} ~~Chesap~~ ^{Chesap} ~~in a most ordinary manner~~ ^{as in the case of a house} ~~to things real.~~ I shall not treat of it to the full extent of the word trespass, but as regards the entering on a man's land, & committing ~~infringements~~ ^{infringements} without any lawful entry, & doing some damage to the same. 3. Bl. 209.

I have so every unwarrantable entry on another's land is an injury - & it is necessary that this entry should be unlawful, for many times it is lawful to enter without licence of the owner, as in the case with an officer to serve a process. So also if the debtor is bound to pay the creditor on the creditor's land, he has a right to enter to pay or make a tender if there for the creditor should refuse him to enter, but he must have a right to do so - this grows out of the contract of the parties - So also it is lawful to enter to make a distress where there is a right of distress - for this is of the nature of a legal process - A man has a right to enter on land of the particular tenant to see if waste has been committed, for as the L. gives

him a remedy for waste he must have a right to see if any has been committed. So again any person has a right to a common law to get punishment. 3 Bl. 212. 8 Co. 146. Esp. 2980.

Again if it has been held by the law, I may enter on the land to take the trespasser. 10 Co. 46. So also ^{by l. h.} one may justify an entry on the land of another, to destroy any dangerous beasts - for this is for the public good. 5. Bac. 130. 2. Bl. 62. 1. T. R. 333. Bro. Jas. 321. There are notes on this rule, but I think the weight of authorities is in favour of it. Same story B. 9. 2. Rail. 558.

It seems to be the case that in hunting dangerous beasts you cannot dig the ground to destroy them - for in this way as the case might be, you might discover a whole lot. This right does not extend to animals not dangerous. Salk 456. 4. Bac. 130. 2. B. 61.

This is that if I stalk a deer on his own land he may pursue him onto the land of B. I doubt this power is in strictness of law for public utility is here out as the question. 1. Mod. 75. Salk 550.

Again it has been supposed by many able lawyers, that the person in our town has a right to enter on their neighbour's land for the purpose of clearing after harvest. But this has been settled to the contrary lately in the exchequer. See in Eng. 1. 44. Bl. 51. 3. Bl. 212. [Gill. 6. 2. 259. contra.]

In regard to all cases in which the law gives a license to enter, any subsequent unlawful use of such entry makes the party a trespasser by relation ab initio - for to the party entered intending to do the lawful act. Mr. G. says this is not the true reason for the relation of the party in case of trespass, is not required for the relation not made him a trespasser in case of actual license given him by the owner. 2. Bl. 211. 5. Bac. 161. In 8. Co. 146 important case. Bro. Jas. 148. 1. Hall's case.

Suppose a trespasser after entering on land should steal - he would be a trespasser by relation - again suppose a trespasser should kill any thing he had destroyed

he is a trespasser ab initio Inst. Law. 17. Ed. 1. 981. 983
Knowles. 147. 1. 1. R. 12. Inst. 1. 47.

But in general a bare nonfeasance, or neglect can't make one a trespasser by relation - for the fault consists in omission & omission will not make one a trespasser - it must be misfeasance. I take it this principle will not hold in cases, viz, that the wrong which would make one a trespasser by relation, must be such an one as would have made him a trespasser independent of any licence given - therefore, nothing short of misfeasance will make him a trespasser ab initio. So if a traveller refuses to pay for his refreshments, he never becomes a trespasser by relation. 5. Co. 136. 2. Ab. 219. 5. Bac. 161.

Again suppose a destruction of goods, refuses to deliver them back, or a taking of money before the goods are impounded - now this would not be a trespass by relation; if he should then it would. 5. Bac. 152.

But there is an exception to the last rule, where an officer has made an arrest on misfeasance & neglects to return the sum; in this case he is to be a trespasser by relation - & the reason given is that if it is not returned after it becomes returnable, it can't be admitted as evidence to justify the sheriff. 5. Bac. 162. Salk. 409. Bank. 20. 12. May 682. 5. Co. 90. 4. Co. 67. 1. Will. 171.

But the true reason as concerns misfeasance any subsequent or lampoon use of acts, in which the L. gives a licence, makes him a trespasser ab initio, is, that when one acts under the licence of L. for the purpose of committing what the L. allows him to do - that the neglect of this last act would make him a trespasser ab initio - for unless he does this last act, he can't be acting under the entry of L. for the L. supposes him to have done this last act. But are the other words where one enters on the land of another by permission of the owner, any subsequent abuse of that licence want make him a trespasser ab initio. Co. Litt. 149. 5. Co. 136.

Now if a man enters my house by permission & afterwards commits a trespass he is not a trespasser by relation.

What is the difference when force is given by the defendant by parties, as to making any subsequent abuse of it a trespass at initio. The reason is, when the defendant gives any man the cause to exercise the right of another, it will always protect the right of the latter. But when force is given by one of the parties, the defendant cannot be supposed to protect it as in the other case. 5. Bac. 162 B.

By instruction page is meant principle of trespass paper.
 Section 166.

It is so by Bac. & Bp. that the act causing the injury in order to be trespass must be voluntary - but the rule thus generally expressed is incorrect - still there are certain instances or circumstances in which the rule will apply. Esp. 2383. 5. Bac. 168. Stiles 65.

The rule is not true when the act complained of is in point of fact, the act committed by the defendant himself - in cases where the act complained of is committed by the defendant himself, the defendant certainly does not regard the intent. It is an infant or lunatic is liable civiliter for damage for acts of trespass. A malicious intention is necessary the damages to be sure, but this is not the ground of the action. Hal. 134. Esp. 2399. 1. Bul. 311. Ray. 4. 67. 1. Bl. R. 396. for the rule batch 110. 117. Aug. 649.

It is equally true that any mistake or accident which inevitable will not excuse is cause of trespass. So if a man should break open another's house, supposing it to be his own, now he would be liable civiliter but not criminally. 3. Lev. 32. Barn. 5. 6. 1. Esp. 2383. ^{It is not set out nisi mens sit rea.} It may be asked then when the rule does apply? It applies only in those cases, where the act complained of is consistently the act of the defendant himself. So where a man sets his dog on another man's cattle, & he chased them after they had got on the land of the owner of the cattle. Now the owner of the dog, pitched by him had purchased them no further than his own lot, & therefore was not to be liable. Now the only enquiry is, was this act voluntary if it was he is liable - if not, he is not liable for trespass - so that it is only to show whether the act was or not. 4. Burr. 2092. Rep. 161. Batch 180. 119. 31.

It follows from what has been said that the person in whom the
 freehold is, can't maintain an action for an injury done to
 the freehold, while the freehold is in the beneficial possession of
 another, even tho the injury is done to the freehold etc.
 & not to the appurtenances, as crops & the like. 2. Roll. 584.
 2. Leon. 144. Barn. & Co. B. 9. *

There is an exception to this rule in the case of a tenant
 at mill, which will be considered hereafter.

In the case of the under tenant farmer, tis a standing rule
 in the English L. that an heir can't maintain this action
 after the death of an ancestor, till he has acquired actual
 possession by entry. Rand. 142. 2. Roll. 503. Exp. 2. 504. 5. Bac. 166.

But in Barn. this rule does not hold, for he can sue if there
 is no one in possession.

Again a person seized of land, before entering, can't maintain
 an action for injuries done to it between the time of seizure
 in & reentry. Barn. & Co. B. 9. Exp. 2. 418. 5. Bac. 166.

But tis said if the estate of the party seized determines before reentry,
 he may maintain an action, this exception is not found in
 the books, but it arises from the necessity of the case. 2. Roll. 580
Barn. & Co. B. 9.

But if the disseisor has entered he may maintain an action on
 the seizure, for all injuries done by him during his possession & for his
 original unlawful entry - for after reentry he is considered
 by fiction of L. as never having been out of possession. 11. Co. 51. 11. Ch. 92
 2. Roll. 584.

But a party seized, can't, after reentry, maintain an action as
 a stranger, for injuries done between the time of seizure & reentry
 for the doctrine of relation obtains only between him & the
 disseisor. Suppose it is seized by B. & after 6 months B. commits
 a trespass, now after A comes into possession again, he can't maintain
 an action vs B, for the trespass committed when B was in possession.
 11. Co. 51. 11. Ch. 92. 1. Roll. 1. Palm. 98. 9. continuation. 2. Roll. 58.
 579. Bro. 2. 548. Moore 461.

This rule as there are actions for & as it seems to be unaltered
 the disseisor can maintain an action vs B - for as interrupted
 possession will give him a right of action. But the rule that
 the party seized can't maintain an action vs a stranger

Later only quoad actionem, & not quoad ſignificationem, for ſurely the
diſſeſſor may take the profits of the land whenever he can find
them 11. 66. 51. Dyce 41. Holt 199. 5 Co. 88 a. b. 6. 61. 464.

Then there may ariſe a queſtion whether the diſſeſſor or
the tenant, can maintain an action of trover or a ſtream
for the diſſeſſor of the ſoil to his own uſe. But it is
clear that a diſſeſſor before mortgagor can maintain an ac-
tion as the diſſeſſor for his undiſturb'd entry - for this was
an injury to his property, an invasion of it. So alſo if B. com-
mits truſſap vs. A. & afterwards diſſeſſes him, now A.
before mortgagor can maintain an action vs. B. for
that truſſap. 2. Roll 593. Cam. D. tes. B. 2. 4. Rac. 164.
Exp. D. 404.

Lecture No. 7

I have ſaid that any perſon in poſſeſſion having a freehold, tenant
for years or for life, could maintain the action of quod clauſum
ſuget, vs. any perſon who does the injury. But a tenant at will or
ſervant, can only maintain as a ſtranger vs. a ſtranger. For
the life may expire when he pleases & destroy the tenancy. 13. 60. 69.
1. Sid. 947. 2. Roll. 541.

But a tenant for years may maintain an action vs. the life
himself, for he can't ſeize him the tenancy at his pleasure. Exp. 199
5. Rac. 167. 187.

But tho' the tenant at will can't maintain the action of quod
clauſum ſuget vs. the life, he may have an action vs. him for the
emblemments - for the hurt of the emblemments is in the tenant
at will. 2. Roll. 146. 150

I find it laid down, that a tenant at will ^{or at ſervant} can't maintain this
action vs. any perſon, who enters under colour or pretence of
right - But this is not ſo - for there may be a perſon that has
a pretence of right, & ſtill be a wrongdoer. 1. Sid. 947. 2. Sid. 167
This ſo that the life at will may maintain this action, quod
clauſum ſuget vs. the life, for the life is in poſſeſſion
rather as a ſtranger than as one claiming adversely. Cam. D. tes. B. 2.
2. Roll. 501.

Altho' the life for years ^{remains} ~~remains~~ the tenant on the land he may not
only enter to take them away, but he may alſo have an

action of trespass if any one who cuts them down or injures them during the term - for he reversion the particular estate of ground on which the trees grow. 5. Bac. 167.

If a lease at will commits voluntary waste, the lessor may have an action of trespass quare, &c. in his reversion, for the act of a person for years respects estate. the lessor cannot voluntarily trespass, so the lessee may, for waste. 1. Roll. 560. 2. Roll. 569. 5. Bac. 167.

So also a person entitled to pasture or herbage may have an action for an injury done to it - for he supposed in this case that he has the interest & present possession. 2. Roll. 210. Bro. E. 421. Dyer 239. 2. Roll. 542. 1. Inst. 4. Moore 902.

I have no doubt must be in possession in order to maintain an action of trespass, but this is only necessary at the time of the injury committed - for if it was committed when he was in possession he can maintain it after he is out of possession, because the right of action accrued to him when the injury was committed. Plowd. 491. 2. Roll. 569. 5. Bac. 167.

The owner of the soil of an highway may have an action of trespass quare, &c. for an injury done to it, which is, such as an highway, for the right of soil is not destroyed of when the highway is granted. 1004. 5. Bac. 167. 1. Roll. 549. Exp. D. 427. Contra 1. Roll. 87. this is not so.

There has been a contradiction in the books, who shall maintain this action, when A lets land to B for a term & gives him half the crops. It is so in some old books, that the owner must bring the action alone - for so it is that B is not in possession. Still it was said they might join in the action for the injury done to the crops. It is so in the later books that B may bring an action of trespass quare, &c. for trading down & injuring crops, that A is not to join with him - to be sure B is considered as owner of the crops while they are growing. But he is to give a part to A by way of rent for the use of the land. First opinion. Bro. E. 149. 2. Roll. 568. 5. Bac. 167.

last opinion B. N. 85. Exp. D. 402. In the first decision it was to seem the crops himself, he carried till they were. In the second they were together.

When a trespass is committed on the land of a married

Trespass
 woman, she & her H. must join in bringing the action
 if she sues she can bring it alone Bro. P. 96. 123.
Exp. D. 404.

Tenants in com. & coparceners as well as joint tenants should
 always join in this action. Litt. text. §15. Co. Litt. 198^a
2. Bl. 154. 2. H. Bl. 987.

If a commission of bankruptcy, issue or an who is not a sul
 jet of bankruptcy as a farmer or lawyer & the assignees
 take possession of his real estate, he may maintain an action
 of trespass quære &c. How 480. 3. H. Bl. 982. Exp. D. 990.

For what injuries will the action lie? It is established
 at L. E. that every person is answerable, not only for in-
 juries done by himself but for injuries done by his
 cattle. The owner of cattle if they stray upon another's
 land, is liable in action of trespass. Now there is no need
 in this case that the owner of the cattle should have any
 previous notice that they are unruly. He is liable for in-
 juries done by them whether he knows them unruly or
 not. Secus, as to dogs & some other animals. The action
 where cattle commit the injury is quære &c. - where
 a dog commits the injury, it is the case. 3. Bl. 211.
5. Bac. 179.

But if 1 man's cattle enter on the land of another
 the want of good fences, which the latter is bound to
 keep, the action will not lie, for tis his fault if any
 damage is done. 5. Bac. 181. 2. Roll 565

Now in cases where the cattle thus enter the person in-
 jured has his election of 2 remedies, he may either
 distress or impound the cattle or he may bring an
 action of quære &c. A necessary consequence of this is
 the other. 3. Bl. 211. Exp. D. 386. 5. Bac. 177. Salt 257.
2. Mod. 668.

This action also lies as an Agister as a person who has
 cattle for another, for an injury done by cattle which he
 has put in. I suppose it might be brought, either as the
 agister or the owner of the cattle. 5. Bac. 183. 2. Roll 566.
Exp. D. 387.

The owner can't have both, nor sue for trespass & for
harm at the same time. he is entitled to but one satisfac-
tion at the time. Salk. 248. 12 Mod 663. Esp. D. 987.

But the owner of property is not always liable for inju-
ries done by his property to the property of another. Thus if a
tree standing on the land of A, is blown on the land
of B & does an injury to B, & it is not liable for this
injury - & he may go & take the tree away, even though
it is an inevitable accident. But if A has his tree & it falls on
the land of B & does an injury; then A is liable, if he
might with proper caution have prevented it, & then
it seems he has no right to take the tree away. 5. Bac. 170.
2. Be. R. 895. Doug. 719.

But if A's timber float, or be blown & injure B's
land, not in an action of trespass, but in case. I suppose
it must be taken for granted that this happened, in conse-
quence of the owner's negligence. 2. H. Bl. 207.

If A's house has been stolen & put in B's lot A may take
it out without being a trespasser - but not so if he
puts the house in himself. 2. Roll. R. 50. 5. Bac. 178.

If the fruit of A's trees falls on B's land, he may
go & gather it without being liable for trespass.
Latch. 120. 5. Bac. 178.

But if the roots of A's trees extend into B's, so that they
are tenants in common as to the fruit of trees. 1. L. 2. 792.
Be. N. P. 88.

If A's trees are to be used to support a bridge over a river, & so it might
grow & cut into B's land, he may gather because of the ne-
cessity of the case. 5. Bac. 179.

If A has rats or mice standing on his land to B, B may
go and cut them down & take them away, even though
they were there by implication in the case. 5. Bac. 180.
2. Roll. 567.

Lecture No.

It has been holden that the entry of a man on the land
of another, for the purpose of running
boats & other water craft, was not trespass - but in

Trespass

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I modern case it has been decided that this is not larceny
 1. Ex. Ray. 728. 6. Wm. 169. pro. Special verdict in justifying
 the giving an order to take
T. Owen. 26. 291. 3. T. R. 259. Contra.

But it seems to be well settled that, if the highway is in any way obstructed, so as to render it inconvenient travel then may pass there an express mail. Ex. Ray. 725.
Long. 76. 2. Shaw. 27. 2. R. 36. 3. T. R. 269. Ex. B. 6. 189.

But this will not hold as to private ways, because the public are not interested in the traveling on private ways, & it is the duty of the grantee to keep it in repair.
2. R. 36. Long. 76. Taylor & Whitman.

The person who has a mere right of pass, can maintain an action for an injury done to his goods growing on them for the party is not his - he has a right to hit his cattle on it & this is all the right he has. 2. Roll. 552. 3. Bac. 167.

The entrance of 1 into another's house, tho' the door may be open, is strictly a trespass, & he has no license, nor any. Ex. B. seems this a violent entry. 2. Roll. R. 201.
Plow. 71. 2. Roll. 558.

But if 1 person has unlawfully taking the goods of another into his house, the owner of the goods may without permission peaceably go & take them - but he can't enter if he is prohibited or has to break open a door. Ex. B. 256. 2. Roll. R. 56. 5. Bac. 182. 2. But 1948.

It is a general rule that every person may enter a house to suppress a riot - an officer too may enter.
5. Bac. 182.

On both these cases the person enters by license of the law. I have already said that one person may enter another's house to pay or receive money. 3. R. 212. Ex. 3. 180.

An officer has a right to enter - to execute any legal process. 3. R. 212.

A house may be broken open to execute a criminal process - a person may make known his business & demand admittance - or he is justified. 5. Bac. 484. 5. Co. 91.
4. Bond. 41.

But an officer can't justify the breaking open a

Trusts

For whom it will not lie. It is a general rule, that an action ^{in trust} ^{in waste} lies as a life for years, for cutting timber, because the life is not in hope. The life has a right to hay-bote plough-bote &c. & this is all. Litt. tit. 71. 4. Co. 82. Allyn 83.

But if the life after having cut timber, suffers it to remain on the land awhile, so that it becomes a chattel, & afterwards takes it away, he is liable to the life in trust for conversion it away, but not in trust for waste &c.

Now there may be some difficulty in determining how long the timber must remain, to become a chattel, without removal - however it is settled that if it remains 1 day in trust, to take it away. 1. Co. 62. 60. Litt. 97.

The action will lie in favour of a life at will in the life, for cutting timber trees whether they were reserved or not. 1. Roll. 860. 60. Litt. 57. Litt. tit. 71.

But an action will not lie in such cases, as the tenant at sufferance, until the life has entered. 1. Co. 400. 2. Co. 150.

But tho in a lease for years the trees are reserved, still the life is not liable for injuries done by his cat &c. - for he has a right to the trees. 1. Ray 737. 2. Co. 400.

An action of trust will lie vs an infant donee - lie, or idiot - for the intention is not material to support the action. Hab. 139. Latch 13. 110.

Every person concerned in a trust is liable as principal - there is no such thing as accessory in trust. 1. Lev. 124. 2. Co. 409. 1. Hale 6. 613. 1. B. 36.

As if A agrees to a trust committed for his use by B, A is liable tho he did not request or command B. to do it. By agreeing to it is meant since

having taken benefit of it. 5. Bac. 185.
It may happen, whether this applies to joint tenants or several persons joint in communities a trust the party injured may have a request on any 1, 2 or all of them ^{one may be sued for the others known to be as trustees} 8. Co. 189. 5. T. R. 649. 5. Bacon. 185.

The party injured shall have but 1. satisfaction. Str. 520.
5. Bac. 192.

This differs from joint contracts - for in that case he may sue within an all the parties to judgment & execution.

The trespasser may bring his action as 1. then as an other & so till all are brought in for the bt. But as there several act, only 1. judgment & execution can be had. Str. 420. 4. 110.
5. Bac. 192.

In trespass the party injured has judgment as but 1. only, & that may be pleaded in bar to a judgment of another trespasser, for the same trespass.

If A & B sue jointly for trespass & A is discharged by the party suing, B is not pleased, tho B has thus it. 5. Bac. 183.

Lesson No.

If a person has granted the reversion or herbage to another, & then enters upon the land & takes it off, the grantee may have his action as him as or any other person. Reg. 285. 5. Bac. 137. 1. East 139.

If both cattle has, then defect of B's fence into B's close & thence there defect of B's fence into C's close, B may have an action vs A - but then A may have an action vs B in the case for indemnity - for B is only obliged to guard as the cattle of B. Jack 161. 5. Bac. 189. 1. Freeman. 379.

Pleading in this action.

When the trespass consists of the abuse of an act given by L. it is sufficient for the plff in his declaration to state the trespass, generally, without noticing the acts given by L. - for that may come out by way of several assignments, after such act has been pleaded by the deft. 5. Bac. 292. Salk 221. B.N. 241. 1. T.R. 579.

Tho the plff may if he please include several distinct trespasses in 1. declaration tho 61. Salk 111. T.R. 296. If the plff may by way of aggravation state in his declaration, among, for which he counts not him

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~~Trumps~~

an action of any kind. Exp. D. 407. Ste. 61. 1. Ed 225. Salk 113 642
Bro. Jan. 665. 2. Que. 1114. (10. 60. 130. contra) 4. Bac. 12.

A plaintiff may gain in an action of trespass, for, though
treating his W. D. as a child, with a few words
but this I conceive can be done only when, the act
complained of beating &c. is committed at the time
of treating the horse - for here making the horse
include the whole gist of the action. 2. O. R. 166.
Salk. 642. 2. Ed Ray 1032. South. 113. Ste. 59. 202. Exp. D. 407.

In such cases however, it does not measure for loss of
service when there is no for goods. There is a distinction
in these cases when there is a for goods, & when
there is not. In the former case we may recover
the loss of service, in the latter not. The trespass must
be charged to have been committed on some particular
day, but, the day is not material, i.e. it need be
proved to have been done on the day stated in the declaration -
but when the day is material no other day
can be proved but the one mentioned. Bro. E. 92.
Exp. D. 407.

But the day becomes material, by the justification
of the deed on a certain day. So that this only means that
the day is not prima facie material. Co. Litt. 285.

The plaintiff may gain in his declaration several
indeed he may gain all concerning in the trespass, or
any number of things. Ste. 420. 3. Co. 159. 5. Bac. 185.

But suppose if it appears on the face of the declaration
that a person not named was a party to the trespass, joined
by with the defendants, the declaration is bad. 1. Bac. 41.
5. Bac. 192. Holt. 165. 149.

I don't think this is founded on principle. Co. R. 166.
1. Sams. 291.

But if the other party is so to be unknown to the
plaintiff, the declaration is good. This is always admitted
and in my opinion is a strange distinction. 5. Bac. 194.
Ste. 420.

The 6. L. requires that the declaration charge the act
to have been done with force & arms, or the force
of these, at 6. L. are not aided by the receipt
for the deed, in such case was liable to retaliation, unless & proved.
5. Bac. 11. Salk 640. 246. 5. Bac. 191. South. 490. 66. 2. Bac. 406
and 506

But now by Stat the Emigration of the money may be supplied - tho it would not be good in general. Dimes Salk. 596. Exp. 6. 08.

And now the fine is taken away & the plaintiff is now to pay the fine & recover it from the defendant. Exp. 6. 08. & a judgment of misericordia is issued instead of a capias. 2. Bac. 507. S. do. 191. 6. Ray. 285.

In case it would seem that the money are not in principle, neither of substance - for here we have no fine to the Ind. it has been decided in case. S. 1. 1. 1. to be matter even of form. & not obligation able, even as special damages. I should think it can principle matter of form & should not draw a declaration without it.

The injury for which an action trespass is brought must be expressed particularly, except when the injury consists in trespass. Then it may be expressed generally. 1. Id. 225. S. Bac. 194.

The declaration should state the value of the thing for which the action is brought. This applies to those cases, where the thing injured is a subject of valuation as property & not to the worth of it. 1. Id. 22. S. 6. Ray. 119.

But the quantity need not always be stated. As for cattle eating crops it is not necessary to state the quantity - for this is easily to be done. But the quantity of either of them will be aid to by verdict. Exp. 6. 08. S. Bac. 196. Bro. Jas. 120. 585. 7. Bur. 2450.

Lecture 10.

In trespass of a permanent nature, when the injury is such as is capable of being continued or renewed & is continued or renewed at different days, the plaintiff may recover for the whole in action with a continuando. 6. Ray. 240. Salk. 697. 9. Be. 212. 2. Roll. 545.

The plaintiff is not obliged to lay the action with a continuando - he may bring different actions for the several injuries. Oyer 220.

Trespass

Laying the action with a continuando, is alleging ⁴⁴⁹ the injury to have been done by continuation or from day to day. Ray 396. Id Ray 240. 3. Bl. 212.

But when the several acts of trespass terminate in themselves, & being once done can't be done again, they can't be laid with a continuando - tho the trespass is committed on different days. So if a man should kill another's cattle on different days, this can't be laid with a continuando. Id Ray 337. 974. 3. Bl. 212. 1. Sid. 319. Salk 636.

But in those cases where several trespassing acts are done on several days, & don't admit of continuations, they may be laid in the declaration to have been done on such & such days. Id Ray 323.

And here it is to be observed, that if several trespasses are charged to have been done one day, no evidence can be admitted to prove any other trespass than those committed on one day. So if it is laid that trees were cut on the first day of June, he may prove it to have been done on the 10th but not on the 10th, 11th, & 12th, Id Ray 240. 976.

There are 2 modes of charging trespass with a continuando. 1st It may be laid for the whole time, from such a time to such a time; & this is the proper mode where the trespass is committed without intermission. But where there is no continuity & they are committed at different times, it should be charged with a continuando at divers days & at divers times from such a day to such a day. This is the general rule as to pleading with a continuando. 3. Bac. 197. Id Ray 232. Id Butts 661. Barn. 1. 3. 2.

But when there has been an abatement of the trespass by a reculver, the continuando trespasses under it may be laid with a continuando - for here the trespass never terminates without intermission - for the abatement is the principal trespass, & the other acts run accessory to it. This rule runs still further - for if the abatement of the trespass has reculvered is again entered he may be laid with the whole with a continuando. Id Ray 977. Salk 488. Bro. 142. Id Ray 977.

If trespasses are laid with a continuando, which cannot thus stand, the issue is fatal to the declaration. Reg. 2. aided by the verdict. 1. Dev. 220. 10. Esp. D. 505 Salk. 639.

But if there ^{are} several trespasses, some of which may & some may not be laid with a continuando, & all are so laid, the declaration tho' good, on demurrer is good after verdict. 3. Dev. 74. 1. Sid. 375. Salk. 51. Ed. Ray 249. 240. 2. Show. 196.

As to pleadings on the part of the defendant, the general issue in this action is not guilty. Esp. D. 511. a person indicted for a trespass has confessed it, & the entry, & his confession is made on the record, he is ever after stopped from pleading the general issue, in a civil action for the same trespass. Esp. D. 511. 2. Show. 493. His confession is not in the same way as he has declared the fact out of it - the defendant's confession is not - if found guilty by jury or by a special jury, thus the defendant is always specially pleaded - it cannot be given in evidence under the general issue. the reason is a general issue denies the facts, but a general issue admits the facts but avoids them. Co. Litt. 282 Salk 287. 9. Ed. Ray 732. 1. Sto 61. Not so in common law.

But that when sued in trespass, may give in evidence under a general issue, a lease for years, i.e. that he is lessee for years to the plaintiff. 2. Roll. 676. Esp. D. 411. So also on general issue the defendant may give in evidence that he is tenant in law with the plaintiff. - But if the fact is that the plaintiff is tenant in common with a stranger to the suit, it cannot be given in evidence under the general issue - but can only be pleaded in abatement. Salk 4. Esp. D. 411. 4. 1. Roll. 656.

When a sheriff is sued in trespass, for acts done in executing final process, he may plead process merely, without shewing the judgment. Hence when the action is brought with party or a stranger, then he is bound to give the judgment in evidence, for then he is a party to it. But when a stranger to such a judgment is sued, he is bound to shew the judgment. Salk. 404. 3. Dev. 20. Esp. D. 512. 511.

A warrant an indictment in B. after he has received
 he directs some person to enter & commit some act
 thereon - & this stranger is said - now the judgment
 is necessarily to put the stranger
 any person aiding the officer to enter is justified
 without shewing the judgment - this justification
 is however invariable. Salk. 107. 409. Osb. 512.

But if an action is brought in a Sheriff by a person who
 is a stranger to the judgment, he must shew that the
 judgment - for him the plaintiff is a stranger to the
 judgment. 5. Bur. 261. 2. Cr. Pr. 701. 2d Ray 748.

Accord & satisfaction is a good plea to an action
 of trespass - but accord alone is not a good plea - for tis
 a bare entry agreement, & this is no plea in any
 case - it must in fact be executed - the better way to
 plead accord & satisfaction is to plead satisfaction
 alone - this is much shorter & safer. To plead by accord
 is to plead the precise stipulation of the accord
 (but to plead satisfaction is to plead that no action
 ensues & the plaintiff accepted so much in satisfaction.
7. Co. 80. 6. 2d Cr. 1. Salk. 124. Skinner 371.

the accord of arbitration is good bar to this action
3. Co. 66. 515.

An action is also a good bar.

But if the defendant pleads a release ^{accord & satisfaction} before the action ^{or publication} then
 there must be a transmutation as to all the subsequent
 time & before the rising and of the writ; when the
 release is pleaded to have been after the action was
 commenced a transmutation is not necessary. Salk. 222.
Holt. 104. 2d Ray. 229. 1.

If an action is brought in several persons for com-
 mitting a trespass jointly, a release to say some dis-
 chargeable - & the person because the act of 1 is the
 act of all - & so the whole trespass is considered as
 committed by 1 person, & consequently a release to 1
 is a release to all. Hob. 66. Bro. Jac 443. 5. Co. 97.

5. Mod. 379. 1. Inst 292.

But if an action is brought vs 2 persons who were in hiding

Trusap.

492. *Trispa*
It is innocent guilty & innocent recommended to him, the pilot.
in this action may enter a note for prosecution. Nov. 76.
as to the other, Nov. 26. 76. Rec. 282.

As the Petitioner has made no joint appearance & has not
appeared from him, this morning is the day in law
for any other action but as the other party has ap-
peared, Ex. 20. Yelv. 67. Bro. Jan. 73. Calch. 216.

[illegible]

The stat. of limitations is a good law - the limitation in Eng. for burying a corpse of twelve, not 6 years - instance? In Eng. the stat. of limitations must be specially pleaded. Ent. 8411.

The basis the stat of limitation may be given in our
 favor under the general issue. H. case. 273.

By disclaimer is meant a disavowal, in right to the land, and
which the trust is not permitted to ^{bestow} ~~bestow~~
A special plea of title is not allowed of in this action
at B. B. the name is known to amount to a general
issue - & the party who pleads a general issue must be
prepared to prove his title by giving colour as he cannot name given evidence as
evidence that the ^{party} has some signed title - in this
way the Ct are called to decide which is the true title.
This applies only to trusts - and in common law
cases q. B. 309. 4. Bac. 102. 10. Co. 90. 4. Bac. 204. 4.
But in trusts the party who pleads the title
specially - may have no stat. except on this
and not have any that would imply it. ^{see 1062} ~~see 1062~~
A party however is not bound to plead title specially,
he may give it in evidence under the general issue. The
stat provides that in an action of trespass, before a magis-
trate, the party shall justify upon a plea of
title. & a verdict shall be entered thereon. ^{& the master & not owner} ~~see 1062~~

the wrong party shall become bound in the matter to prosecute his claim, & if the Deft refuses to be bound his plea shall abate. By abating in this case meant that he shall have no hearing of that plea - for the magistrate shall, in such case, try the cause upon the general issue. If the Deft does become bound, the means is to be continued in the next county, &c. There is some thing strange in the phraseology of this Stat. 2. &c. 10. To stay, might, & purpores, that if the Deft doth save his title, the p^lff shall recover the whole &c. &c. Under the general issue the Deft means only upon his title before a single magistrate but he could try a question of title when he is not in issue - for the issue when found would be conclusive as to the point in a subsequent case of the same kind. But a plea of an action of title is not a bar in an action of trespass thus a brings an action of trespass, vs B. & it is found in B. Now this suit has an action of trespass vs A. & East. 3. 6. 2. Smith 79. n. 60. 7. Hinkley 375. It is further to be observed that when the Deft removes his claim to the county Ct. he can change or alter his plea, as made before a single magistrate in his plea of title. A person is not defective in a new matter of fact only the Ct would send him to alter d. 2. Smith 80.

Rules of Evidence in this action.

The evidence must always follow the issue - so that that goes to the merits of the case, & which is not embraced in the issue, can be given in evidence. 2. Bl. R. 1165. 3. Burr. 155.

Under the general allegation as other circumstances the p^lff may give in evidence, any matter of fact which will not at itself support an allegation in his favour - but no evidence can be given of a fact

504, ^{perhaps} which would support an action itself, unless the fact is alleged. So the plaintiff could allege under a true name, and the defendant has to say that he is not the same, or that is a ground for a distinct action. Lib 22
E. 2. 517. 2. Ben. 1114.

It is not necessary for the pilot to cut out the boat
must be on land, and if he did he must prove them
as he says. He must prove them substantively, that
not only that person as an enemy, but that
2. And 177. Ex. 2. 57. 174.

When the action is said to be a consequence, the usual
conclusion is, the evidence within the time and in the
usual course of things, the same as, there is, that when
the fact is said to be a consequence, the conclusion
is regarded as a doubtless fact the time and
the place. B. 1. 1. 46.

He may be embarrassed, & give a brief
to some one come over the country, rather than Dore's & may
and himself. He says.

you make a half day a two days walk
to make. he must know a country on his front,
before an action takes place the two half days
a day. The object of the war is to
large, it is, always, he can be only means for the great
ending.

the people makes a formal agreement to protect the general interest provided he must preserve the rights of the bourgeoisie, mentioned in the law in force. The people must always be the same, as in the different periods there is the same law.

Exp. D. 478
Nov. 6 1894

It seems to be a general rule that in a free discussion, if the fact seems so much as smooth to a justification in fact much support has been given to a judgment. See the 148. Exp. D. 49

The straight mind must produce a copy of the idea
present when set by a stimulus to the musician.

Sp. hal.

450.

the same distinction takes place here as in preceding
which has been already mentioned. D. Ray. 733.
2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

The amount of damages is estimated on a scale
of 100.

That ban. 077 for costs in case of turshaf.

A better way is to plead the special plea, on the part of the defendant, that it cannot be guilty on the remainder of the issues.

As it is in the old books that if an action is brought as a number of trespassers ^{& they never as trespassers} generally, a writ ^{is} ~~has~~ ^{is} required, and ~~responde~~ before recovery, than all the other actions.

1. Barrow. 207^a note. G. T. B. 199. Bro. bar. 299. 269.

Barrow 17. 1. 11th 90. vs this rule.

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Outlaw

Outlaw is an injury by which a tenant in possession of lands tenured or held in fee, is wrongfully removed & turned out of the possession & enjoyment. It is then in degree to be the wrongest removal of a tenant from his possession. 4. Bl. 167. 177.

This turning out may be done on estate of freehold, or an estate less than freehold. But this distinction is to be observed. When the tenant is on an estate of freehold, he is termed a disseisin. When he is from an estate less than freehold, he is termed a dispossession. Outlaw then is a generic term of which disseisin & dispossession are distinct species. 2. Bl. 167. 177.

Of outlaw there are five species - viz. abatement, intrusion, disseisin, dispossession, & disavowment.

But of the remedies of these different kinds of outlawry only one is to be considered - that will consist of the old & the action of ejectment, or as it is called ejiciam. —, & the action which is introduced in lieu of disseisin.

Ejectment

This is an action by which a free person who is ousted of his tenement, recovers it from the wrongdoer together with his damages. 3. Bl. 177. 5. Co. 150. 7. Co. 77. 2. Ra. 160.

Extraction

It was then only with propriety in favour of a wife
for years, to remove his name, but it has in being
been converted into an action whereby to buy the
title to the land itself which is done by a purchase
henceforward to be explained.

The law where a person is deprived or ousted of his freehold, he recovers it from his dispossessor together with his damages in the action of dispossess. But we have also the action of ejectment properly so called, which is founded upon fact & not upon fiction. The action of dispossess in law is a mixed action for in it is recovered not only the freehold but the damages also.

light wood is called in Bay a mixed section but
improperly - for the damage, now uncovered in it
still the freehold is not - but only a lease for
years, which is prob. paty. 3. Bl 191. A. Ba 160

The bill is an action of ejectment entirely recovered
and nothing but damages - he did not give possession
of the land - as this was not a possessory action.
But when the bill was decided by the jury he
might recover the land, not in ejectment, but
in an action of assumpsit of quiet enjoyment.
B. 86.159.8.240.

The owner of a chattel interest in land could not ac-
tually recover it specifically from the wrong doer,
still the law might recover it as an issue of the
freehold, from whom it again passed to the lessee,
but who had only his measure in damages
i. e. 20 s. 20 s. 20 s.

there being a defect in it of 6, 6 of 1969

Exemption

403

compelled the wrongdoer, to return the land itself to the party injured: - This however etc. of £ 1000 after adopted. & gave possession of the land. - But even at this day the p^lty in his writ of exemption sent demand possession of the land, but merely damages for the ouster - after judgment however for the p^lty. the writ of habere possessionem issues upon it & the p^lty is put into possession. For the form of the writ see 3. 6. 100. appendix no 11.

It is of L. began to afford this specific remedy about the reign of Ed. IV. & it has been since continued. And exemption has long been the usual & indeed almost the only action to try the title to real estate - the practice commencing with the reign of the VII. There is some by a string of legal fictions he undertakes however to give an account of the wrong as this is done by 34. 100. 667. 2. 34. 100. 4. 35. 100. to 108.

The bare name of the proceedings in this action are fictitious - for where the p^lty owns the freehold he can for it immediately - if his interest is a term for years or less for it as such.

Since this action has been tried to try the title of the lessor, & not the rights of the p^lty - in reward nominal damages only are given, & he now suffers that only nominal damages, or damages for the point entry of the wrong doer can be recovered - & hence his usual after obtaining possession of the land, for the p^lty to bring trespass for the same judgment 2. 34. 100. 100. 2. 34. 100. 100.

Expectant.

464 For what things judgment will for.

to a writ that judgment must not lie for any subject
of which the sheriff cannot deliver actual corporal
possession under the execution - or a thing on which an
entry cannot actually be made. 4 B.P. 206. Bro. p. 511.
2. In J. 166

Acquaintance than this nation can be maintained for
any subject lying in grant, or those things, which
pass by mere grant as contradistinguished from
what can lie in mere. B. N. L. N. Lib. Aug. 751. no. 1. 176
bro. 6. 103.

and is settled in Eng. that must be for hands
sent out as a highway in favor of the owner of
the soil. L. ^{Rev.} 143 Apr 10th. 3. Ba. 85.

It has been affected by a course of denudation of 30 years in
own. That with it will be in favour of the knowledge of
in the last time upon who has enclosed a part of the
highway. L. Post 118.

then to party to whom the land belonged when
when the highway was laid out, nor was in settlement
is one who has enclosed a part of it, he was not
sent to the court on right of way in the matter. In the
last decided case here it is that they could not move
in settlement.

This action may also be maintained by the executor
or owner of ^{the heritage of} and, tho the wife belongs to another, or on
the same principle that we can have bishop's goods
return in $\frac{1}{2}$ $\frac{1}{2}$, he can have curial to recover for
return ordered. 11th. 167. H. 10. 303-401 11th.

at present none is known to the south.

stream of water so requires. Hence the water is continually fluctuating & paper can be laid out & it has an action on it so to move sand around with water -
year 143. R. p. 107. 2. 36. 18. Brown, 171.

This action would not be brought for an action long - would be for a breach of duty - is an unlimited remedy of action or remedy down. If the p. 114, p. 115, his right to his part of what he claims he will be covered for so much - the time formerly, however that all need for must be measured in time. R. p. 3. 52. 8. 171.

As a p. 114. that in former case the action of exemption under he has at the time a right of entry - or in other words he must have a paper, p. 115, title. Hence of a tenant in tail since in p. 114, the one if he in tail has a right of entry & can use the action. 2. 36. 18. 171. 171. 2. 175. 10. 171.

If the right of the p. 114 or those under whom he claims has been out of paper 20 years in Eng. or 15. in Scot. he is barred of this action by the stat. of limitations - and by the stat. 21. for. 1. the party claiming has not been in paper 20 years since the right of entry and he can maintain exemption - But in Eng. the right of entry only is covered in 20 years - for the right of entry remains until 60 years. 3. 36. 2. 171. 3. 36. 171. 2. 36. 171. Stat. 1. 174.

The paper requires to have been used in the party claiming within 20 years, to enable him to his action against some person in the paper - for a writing. The 2. in Eng. a construction or presumption paper is insufficient, 3. 36. 171. 2. 174. 171. 2. 174.

the proper red to it may not be conclusive. 10th. 659
10th. 780

The meaning that the gift rules in this must now
 be made, an error on the ground that it
 was not given, that the very condition is action
 of judgment.

When the action is in favour of the gift & formation
 a clause in the deed, giving him a right of entry
 in case of the non-fulfilment of the condition
 of any other covenant. It is not possible that there
 must be an actual entry by the gift, but this has
 since been decided not to be necessary & in this case
 the action may be maintained immediately - for
 the breach of the condition has failed, must the gift
 now pass from right to deed. 10th. 782, 10th. 782, 10th. 782
10th. 782, 10th. 782

When the gift speaks of an entry for the gift to be
 made complete an actual entry is not intended -
 but action of an entry for the purpose of defeating
 the gift after an actual entry is necessary. For in the
 former cases the non-fulfilment of the covenant has
 made the gift to be, if it is not, it is not, it is not, it is not
 if it is not, it is not, it is not, it is not, it is not, it is not
10th. 782, 10th. 782, 10th. 782, 10th. 782

In the latter case an entry is necessary, because there
 is no intent to create the action of the owner himself to do
 that the title of the owner is proper or otherwise is
 state.

Who can maintain this action.

He who has the legal proprietary title may maintain the action of ejectment, & regularly, he only. Since the mortgagee can support the action as the mortgagor both before & after the day of payment for he has the legal title.

So too he can support it as the lessor of the mortgagor - if his name was recorded subsequent to the mortgage - but if lands are leased before they are mortgaged, the mortgagee can't evict the lessee - for here the lessee's title is older than the mortgagee's.

Eng. 11.

But in Eng. a mortgagee may maintain this action as the older lessee, provided that he has given him previous notice that he don't mean to dispossess him, but only to compel him to pay the next accruing after the mortgage to the self & not to the mortgagor. Eng. 12. 111.

As the mortgagee may ordinarily receive as a streamer the mortgagor or his lessee, so he can do this tho the whole mortgage money is paid, provided he not paid at the day. for when the money is paid after the lawful day is passed the mortgagee still remains the legal estate - & in such case may be called in the books a satisfied mortgagee carrying the legal title. Pow. M. 214. 1 Vern. 187. 2. Co. 30. 107. 179. Hardw. 318. 1. 1782.

This principle has been twice attacked in the state of law - but it has been twice confirmed by the superior ct, & once by the ct of errors. See in Phillips 1808, Woodruff v. Woodruff.

that he is a tenant in fee that the person in whom it is not
at the time of the sale may recover against the third
party night is in a stranger or even in the third party.
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.

In one or two modern cases it has been inclined to
decide this in favour of equitable rights. Thus where
a lease without a stamp was executed, which consequently
did not carry the legal estate, but would amount
in equity to an executory agreement to convey, the law
held that the tenant should not oust the lessor in his
action of ejectment. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.

This decision however is held in later cases not to be
binding - & indeed it can't be for if it were all the law
cases between the 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.

It is a principle that in ejectment the plaintiff must move
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.

It follows from this that the defendant may defeat the
action of the plaintiff by proving the title to be in a third
person. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.

But the rule is general that the defendant may show
the legal proprietary title to be in a third person, yet
it is not valid when the plaintiff's title is derived from the
title of the defendant from plaintiff. For here the defendant is in
possession of the mortgage and the plaintiff is not.

Exemption

gives in exemption, the latter can show the title to be⁴⁷¹
in a third person, for this he is stopped from doing
by his mortgage. See 60. 10 of the mortgage or for
reason the person is the life saved over, no count in an
action by the life saving that he has title tho he
has nothing but an eqty of redemption. 60. 15.
7 Co. 480. 12. 10. 110.

Upon the same principle if it comes to 3 & 4 to 5
& 6 holds over, he can afterwards in an action of
ejectment brought in time as I prove that the title
is in another 7 Co. 488.

The devise of a term for years may maintain the ac-
tion of ejectment - but not however in a case where
the estate of the tenant has reverted to the reversioner
because a term for years is pure feoff, which differs
other specific legacies not in the estate. 10. 12. 1. 490.
Hobbs on Legacies 199.

But in case the object of the will is not a conveyance
to vest the legal title in the devise or legatee.

But in case where a freehold is devised, the devisee
may recover it immediately on the testator's death.
Inst 240. 6. 1. 542.

The assignee of a bond may maintain this ac-
tion for lands belonging to him at the time he com-
menced the the act of bondbreaking. 12. 1. 1. 191.

But the committee of a lunatic can recover in
his own name for lands belonging to the lunatic.
for the action must be in the name of the lunatic.
Hobbs 218. But 16. 2. 111. 110.

But on this action is also brought in the name of the tenant by his executor. Stat. Con. tit. 10. c. 1.

The executor may maintain this action for an estate either of his testator or himself, if the testator has a lawful progeny - and when no testator is appointed the executor may have the same action.

But if it is supposed of an estate of inheritance & owned by it & the heir may have judgment. 4. Co. 7. 2. but 20. 3. 5. d. 19.

The action at l. & c. cannot maintain the action of judgment because at l. & c. in court own can interest in law. 1. 2. 3. 27. 273 274. 1. but. 2. 3. 8. 121. 7 Co. 10. 4. 1. 7. 300.

But by a l. & c. of the U. S. an alien may become naturalized without the interference of the legislation & respect himself of all the privileges of a native born citizen. As as a citizen in some particular. Stat. U. 1. 2. 10. 133. repeated. in Vol. 7. 7. 106. 136.

In some of the states the R. of the l. & c. is varied by stat & where the l. & c. don't intervene then stat have the operation. Acts of this kind exist in N York, Pennsylvania & some other states - In some say the l. & c. concern in power.

A bishop for life or years may maintain this action in the bishop himself - for himself in law - has the right of possession as every one. 9. (36. 130. 130. 1. 187. 8.

A l. & c. joint tenants & coparceners must join in this action - tho as to tenants in common the R. is otherwise - But in joint tenants in common and

coparceners may join or not. whole joint tenure must
join.

If several tenement is common join in Dem. in case ac-
tion of ejectment or distress - a man must if one want join
want the rest from proceedings - and if one releases the
action to the 5th. then the rest may go on for their
share. 2. Chapt. 11.

Plaintiffs.

he that in this action should state the 5th. title as it
is - & must show a subsisting right at the time of the
action brought - for if he then has no title he has ne-
arly no right to recover. 1 Sid. 7. Str. 580. 3. Wils. 274.
4 C.R. 680.

But to wit that the 5th. need not allege his entry to
have been made on any particular day - and that he
sufficient to set out the term to himself - & then allege
that he afterwards entered in pursuance of the lease - the
only reason assigned for this is that "so are the precedents"
Exp. D. 448.

In bar the 5th. need not state any ~~entry~~ ^{entry} - for here
the action is not brought upon the demise or lease for
that purpose - but the 5th. title is deduced upon
as it is.

The counter should always be said as subsequent to the
commencement of the 5th. title - otherwise there appears
to be no cause of action. 2. No. 176. B. 4. P. 110. 1. Sid. 7.

But the 4th is not bound to surrender for the small quantity
by, & he can recover for as much as he proves till he
proves he proves till to no more than he demands
- for there is no case in which a man recovers
more than he sues for - because the 4th is permitted to
make the best of his own case - two. L. 13. l. 1. off 734. 9 two 334.
Bur 926 comp. 260.

And if the 4th sues for a longer term than he
proves he may still recover - for the question is has he the
propriety right. B. H. P. 106. Exp. 3. 337 8.

The King the real 4th on being admitted to defend in
the room of the casual ejector, must confess team entry
and ouster - but this does not remove the necessity of
the 4th proving, that the 4th was in possession at the
time the suit was commenced, 1. 116. 222. B. H. P. 110.
7. T. R. 327.

The issue to the action of ejectment is "not guilty"
but to the bondable action of ejectment is no wrong
or disparage? 9. H. 308 & offender IX. X.

The King there is no such thing as special pleading to
this action - for the common 4th who when the real
4th is permitted to defend, requires King to plead to
the issue 9. H. 308 & IX.

The action of ejectment or ejectment is of a higher na-
ture than trespass - and it has been decided in 10.
that a judgment upon a plea of title in trespass does
not prevent an action of ejectment - and
this seems to accord with the English principles. King 318
2. Sumpt. 79. 213. 2. 1304.

On the Verdict & Judgment

The plaintiff may recover according to the title which he proves, the contrary to that which is in the title - as where he declares for a given number of acres or less - he may have judgment for more, when he has shown title to give. *Exp. 447. 490. Com. 260.*

And if he declares for several subjects in one recovery for one of them without the rest - and if one is proved & the other all alleged to him have judgment for the first. *Two to 186. Exp. 2. 710.*

When the plaintiff recovers for more than he has declared for it he recovers there as much as the land itself. *Exp. 472. 1. Inst. 2. 2. At 12. 18.*

If the plaintiff has a recovery in this action he is entitled to a writ of execution, a writ of habere possessionem, under which the sheriff puts the plaintiff in possession, & turns out the defendant & all who may be in the premises. *Inst. 252. 2. 4a. 124. 2.*

In doing this the sheriff has a right to break the outer door of the manor house for other uses, as there may be it will be impossible to count the two cases. *5 to 91.*

In case if the plaintiff takes possession of the premises pending the suit, he may still proceed to judgment & recover his damages & costs - Little is to be found upon in the English books on this point - the best is in such case it may be proved in bar of the action - but to discontinue with the suit to remove the plea or not - this may be proved by other nominal recoveries, only one is allowed. *1. Inst. 74. 12th 182.*

If the term for which the action is brought expires, and in the end, the p^lff wins judgment for his damages & costs - but in such case he cannot recover the land for which judgment is rendered he has no right to it. *Str. 1056. 1. Inst. 286. 2. A. R. 328.*

If the p^lff proposes himself under his writ of habeas & the d^{ft} again turns him out the p^lff may sue a new writ of habeas & prosecute him for a contempt of c^t - but if he is turned out by a stranger he must bring a new action. *1. Inst. 771.*

In the English action of ejectment if the verdict is for the d^{ft} the c^t will seldom or never grant a new trial - for the p^lff can commence a new action by substituting a new nominal p^lff - & a new cause of action - hence a new trial would be granted, even tho the verdict is in d^{ft} & end. *Str. 1106. Bay. 2225. 5. Ba. 253.*

But if the verdict is for the p^lff, a new trial may as well be granted here as in other cases - on otherwise he might be a sufferer by being long unnecessarily kept out of possession. Besides the issue of the d^{ft} may in his reply allege that the ^{p^lff} d^{ft} may have none - hence if the p^lff has recovered by any fraud, the d^{ft} can by a new action recover possession. *See 2225.*

Some lawyers holden that a new trial in ejectment suits must be granted to either party, as a new action might be brought - but as to the d^{ft} this is clearly not so. *2. Inst. 678. 680. 1. Inst. 514.*

In such a new trial may be granted to either party in the same manner as in other actions - because there being no parties parties the verdict in one action is conclusive in another.

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Trespass for Mern Profits.

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1. the action of Trespass for Mern Profits after
wronging by the p'tt in judgment.

The verdict for the p'tt in judgment establishes his
title - it follows then that from the time of its ouster
the aptt is a trespasser - hence after this the p'tt has the
proof for the damages he has sustained by the tres-
passer's possession of the aptt - this action is valued by the
jury for mern profits, & the annual value of the land
during possession is prima facie the amount of damages - the
damages may be vindictive sometimes. 3. Ch. 20.
L. 1. 181. Talt. 698. Cro. E. 182.

The action in this case is tried with a continuance -
the p'tt will recover damages for only one day's posses-
sion - the p'tt states the ouster & the subsequent
wrong specifically, he can recover his whole dam-
ages without a continuance. 2. L. 181. 182. 183.
appt 402.

It is in the place of this that the p'tt can sue a
will in equity, & compel the aptt to account for mern
profits - but this remedy is now universal. 1. L. 181.
L. 182. 183.

The reason of this action is, that ejectment only gives
the title to the land; no damages in it are given -
tho this was once done - he now thought however to
be in the 2. 3. Ch. 20, 3. Ch. 311. 2. L. 181. 182. 183.
L. 184. 185.

In this the p'tt may recover all his damages in e-
jectment, tho he is not obliged to do so for them - but not
understanding this case is done for wrong to having
trespass against him for the mern profits.

The trespass quere after a wrong, in judgment.

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Waste

Waste is an engaging scene to the audience by the
 having the delightful habit of the artist the melody
 for the singing at an action of words when there
 was no to be encountered by the eye and the sound of
 the instruments, and appeared more like the true
 just people.

There is however to be noticed in the action and
 scene as well as others in for words in for each
 and as it is by brought in so we find it a great
 part of the of a strange as the transition, it did
 must be brought in the sound, which has the more
 by in the wind-up.

Waste must be brought in the sound of the instrument
 there for the in the person only that it will be.

At the end of the scene the scene only in the scene
 was depicted the scene of the scene in the scene
 and by the meeting and the scene was that in the
 scene was depicted by the end of the scene of the scene
 of the instrument, the scene brought by the scene of
 the scene scene brought in the scene.

It has been made a question whether a musician
 is better in words as depicted by the scene of the scene
 of the scene in the scene of the scene of the scene.

By the end of the scene the scene is depicted in the
 scene for the scene of the scene of the scene of the scene
 for the scene of the scene of the scene of the scene.

The scene does not appear to be a scene of the scene
 of the scene of the scene of the scene of the scene of the scene.

must be brought but need not to lie for the time
was merely a temporary - for the insurance of the
must be brought to suit for C. 690.

At L. C. damages only were success in this action.
But by the act of forfeiture if the waste is proved,
it will entitle the action for both. In fact under
the law as thing would be & could damage. 6d I. 1. 2.
Co. L. 11. 1. 2. 1. 2. 1. 2.

When the law has imposed penalties to the owner
of the land, the law only is imposed.
In fact, the law only is imposed in this
case.

By the law of thing is great damages to
to say this

By the law, there always granted there is the most
the law only is imposed by a law only for the purpose
of the law only is imposed by a law only for the purpose
of the law only is imposed by a law only for the purpose

Signatures are usually granted where the law
has imposed the law only is imposed by a law only for the purpose
of the law only is imposed by a law only for the purpose
of the law only is imposed by a law only for the purpose
of the law only is imposed by a law only for the purpose

By the law, there always granted where the law
has imposed the law only is imposed by a law only for the purpose
of the law only is imposed by a law only for the purpose
of the law only is imposed by a law only for the purpose
of the law only is imposed by a law only for the purpose

Waste

all such waste is interpreted by the statute, is 491
such as benefits the tenant, as the cutting of wood
& timber - but if he destroys the party, it does not
necessarily, intending to suggest the indictment
they commit an injury. 2. No. 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

If a man burning the logs till to an extent & with
the equitable consent of the owner, he is not liable in
a d of b, but when some say no consent, & they
commit the wrong, it is a general rule that he who
does the equitable thing.

As to a d of b that are not equitable, some
the innocent must bear the action of waste they
will not relieve, as much as injury to the further
communion of waste.

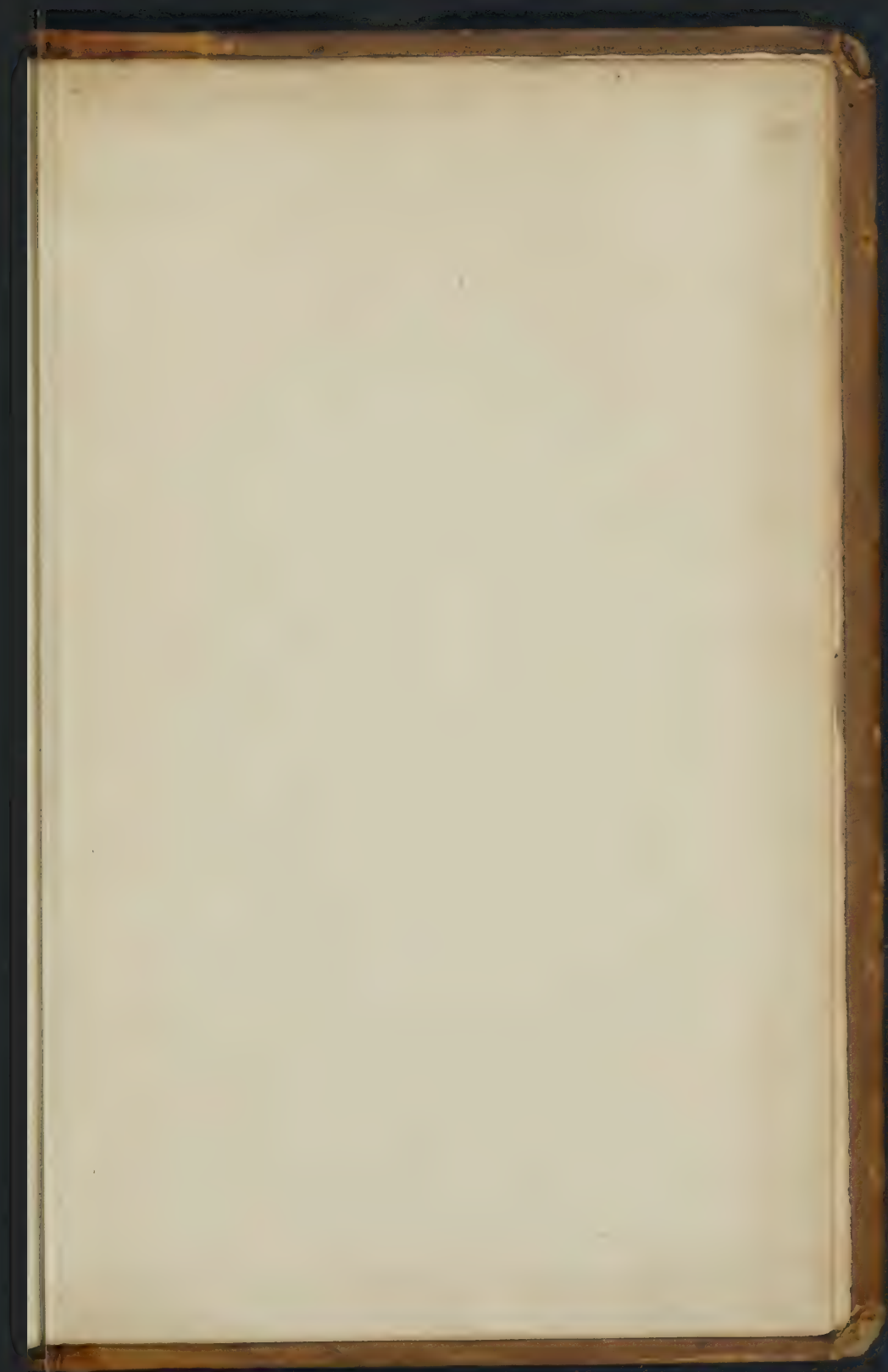
As to waste, a majority in favor of waste, and
thereby before the majority of the whole they will
repose in law.

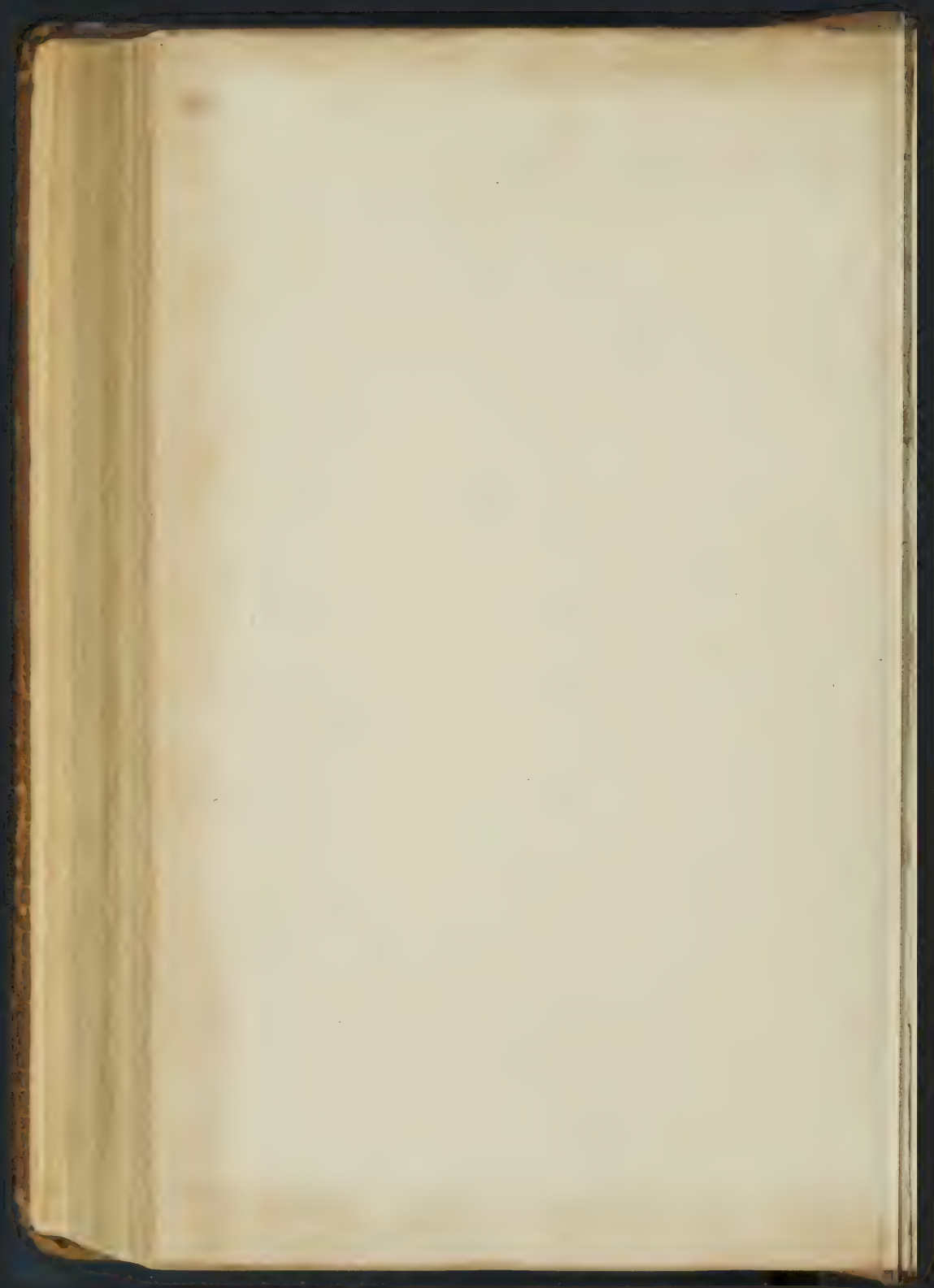
But as they will do this in favor of the usual
guage, so will they in favor of the usual guage
and not only so, but accept the usual guage to
resent for the usual, which he has consented to
the communion of the usual guage.

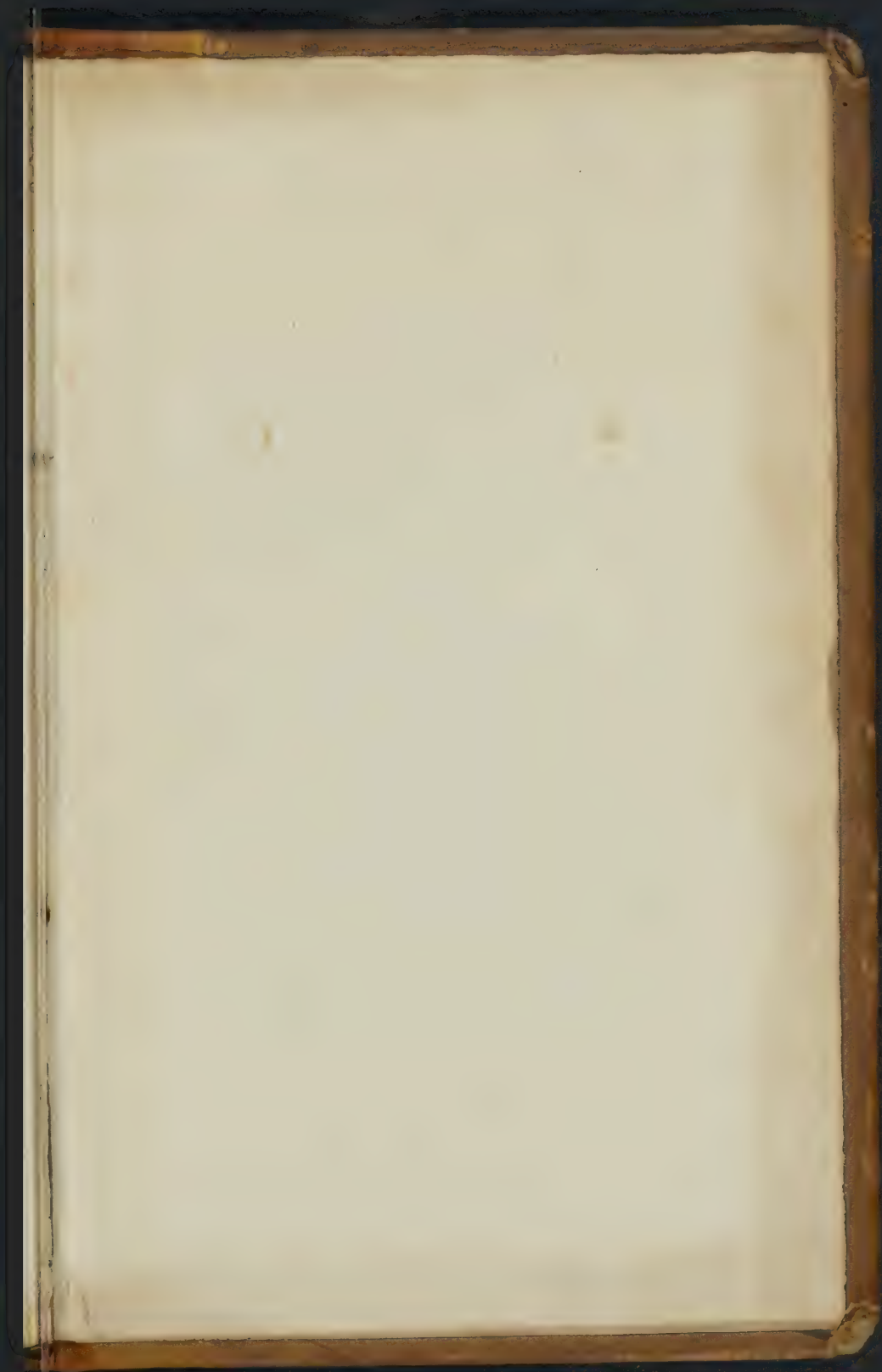
492

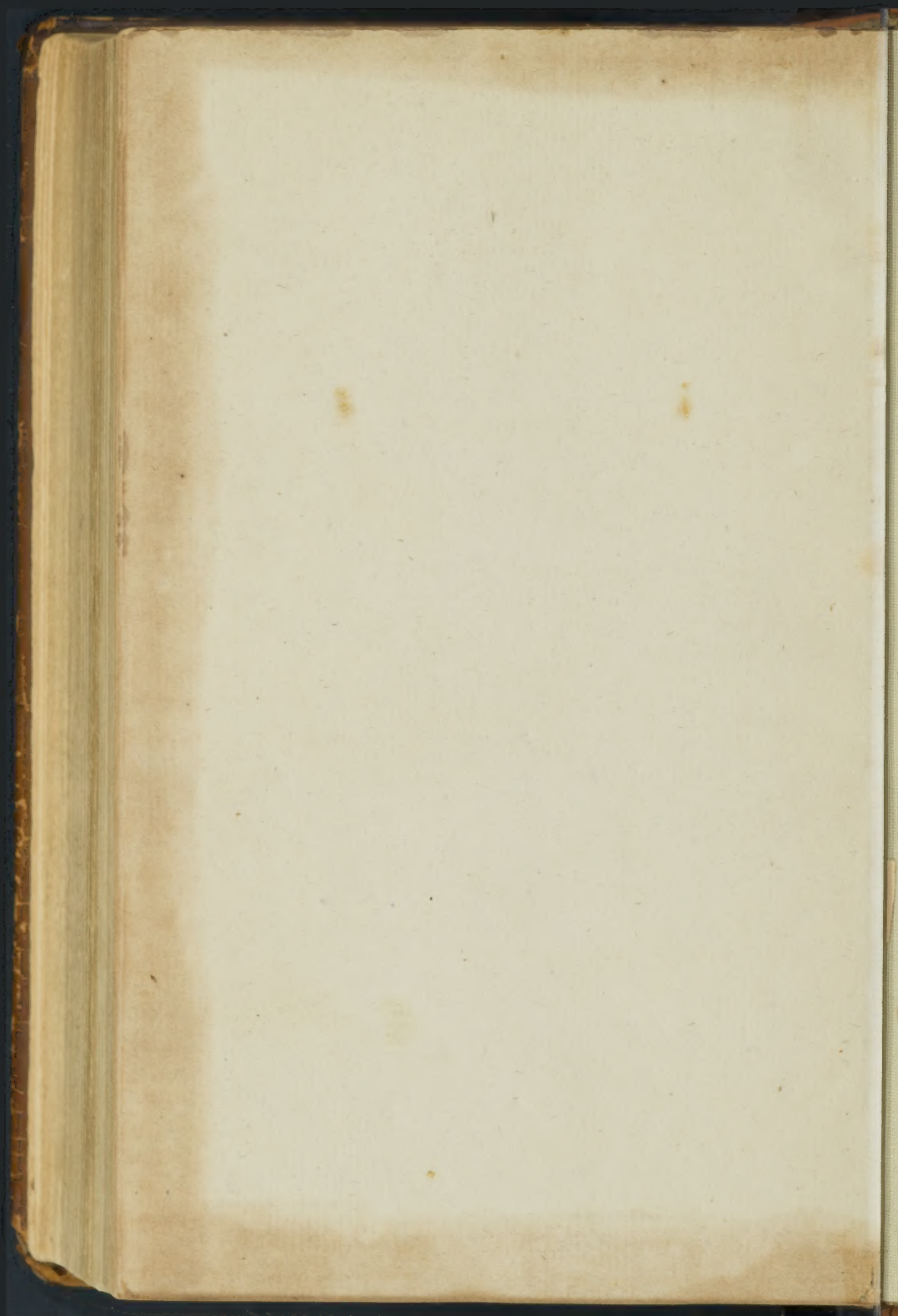
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